TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1941

No. 58

DISTRICT OF COLUMBIA, PETITIONER,

vs.

HENRY C. MURPHY

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

PETITION FOR CERTIORARI FILED APRIL 25, 1941.

CERTIORARI GRANTED MAY 26, 1941.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. 58

DISTRICT OF COLUMBIA, PETITIONER,

vs.

HENRY C. MURPHY

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

INDEX.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JUNE 18, 1941.

1 BOARD OF TAX APPEALS FOR THE DISTRICT OF COLUMBIA

RECEIVED AND FILED SEP. 16, 1940

HENRY C. MURPHY, Petitioner,

v.

DISTRICT OF COLUMBIA, Respondent.

DOCKET NO. 346

PETITION

The above named petitioner petitions for a cancelation of an assessment of taxes against him and alleges as follows:

1. The petitioner is an individual with residence at 2700 Q Street, Nortnwest, District of Columbia.

2. The tax in controversy is a personal income tax for the calendar year ended December 31, 1939, and in the amount of fifty-one and 10/100 ($51.10) dollars, of which twenty-five and 55/100 ($25.55) dollars has been paid.

3. The return of taxpayer, in respect of which said tax was assessed, was filed (mailed) on February 21, 1940, and the first half of the tax was paid by the petitioner under protest in writing on the same date. A copy of the material portions of the return is attached hereto as Exhibit "A".

4. The Office of the Assessor of the District of Columbia erred in not granting the taxpayer's claim for a refund of the tax because the taxpayer is not domiciled in the District of Columbia, as wrongfully held by the Office of the Assessor.

5. The facts upon which the petitioner relies as the basis of this proceeding are as follows:

A. The said petitioner is domiciled in the State of

Michigan, County of Wayne, as is evidenced by the fact that he is a legal resident of said State and County, and is a registered voter therein.

WHEREFORE, the petitioner prays that this Board may hear the proceeding, and cancel the said taxes levied against the petitioner.

(Signed) HENRY C. MURPHY,
2700 Q Street, Northwest,
District of Columbia.

2 DISTRICT OF COLUMBIA, ss:

I, HENRY C. MURPHY, being duly sworn, say that I am the petitioner above named; that I have read the foregoing petition, and that the statements contained therein are true, except those stated to be upon information and belief, and those I believe to be true.

(Signed) HENRY C. MURPHY

Subscribed and sworn to before me this 13th day of September, 1940.

(Signed) H. WARD STUTLER,
Notary Public, D. C.
My Commission expires July 14, 1945
[NOTARIAL SEAL]

Ejd - mailed check for $25.55

No. _____

Receipt

1939 • INCOME TAX • 1939

GOVERNMENT OF THE DISTRICT OF COLUMBIA

If receipt is required fill in name and address below. This receipt not valid unless collector's stamp appears hereon.

Total tax (from item 30)	$ 51	10

INDICATE ABOVE THE PROPER AMOUNT

NAME Henry C. Murphy (Type or Print)

ADDRESS 2700 "Q" Street, N. W.

Washington, D. C.

MAKE CHECK PAYABLE TO COLLECTOR OF TAXES, D. C.

Do not detach

Collector's Stamp

COPY TO BE RETAINED BY TAXPAYER

PRESENTED TO CONGRESS BY MRS. A. MURRAY

Page 1

FORM D-40

DISTRICT OF COLUMBIA

INDIVIDUAL INCOME TAX RETURN

For Calendar Year 1939

or fiscal year begun , 1938, and ended , 1939

To be filed with the Assessor, D. C., not later than the 15th day of the third month following the close of your taxable year

FOR NET INCOMES OF MORE THAN $5,000 FROM SALARIES, WAGES, DIVIDENDS, INTEREST, ANNUITIES, AND FOR INCOMES FROM OTHER SOURCES REGARDLESS OF AMOUNTS

Print Name And Address Plainly

Henry C. Murphy (Name) (Use given names of both husband and wife, if this is a joint return)

2700 "Q" Street, N. W. (Street and number, or rural route)

Credit 9020 Income Taxes

Class _____

Serial No. _____

$ _____

Cash Check M.O. Amount of Payment

Do not write in above space

(Street and number, or rural route)

(Before Preparing This Return, Read The Instructions Carefully)

Item and Instruction No.	INCOME			
1.	Salaries and other compensation for personal services. (From Schedule A)	$ 5,994	91	
2.	Dividends	140	—	
3.	Interest on bank deposits, notes, mortgages, etc.	1	84	
4.	Interest on corporation bonds	10	—	
5.	Income (or loss) from partnerships, syndicates, pools, etc (Furnish names and addresses)			
6.	Income from fiduciaries. (Furnish names and addresses)			
7.	Rents and royalties. (From Schedule C)			
8.	Income (or loss) from business or profession. (From Schedule D)			
9.	Gain (or loss) from sales or exchanges of property other than capital assets. (From Schedule E)			
10.	Other income (including income from annuities). (From Schedule F)			
11.	Total income in items 1 to 10. (Enter nontaxable income in Schedule B)			$ 6,146 75
	DEDUCTIONS			
12.	Contributions paid. (Explain in Schedule H)	$ 44	—	
13.	Interest. (Explain in Schedule I)	20	—	
14.	Taxes. (Explain in Schedule J)			
15.	Losses other than from business or profession. (Explain in Schedule K)			
16.	Bad debts. (Itemize and explain in separate schedule)	10	—	
17.	Other deductions authorized by law. (Explain in Schedule M)			14 —
18.	Total deductions in items 12 to 17			$ 6,072 75
19.	Net income (item 11 minus item 18)	$ 1,000	—	
20.	Less: Personal exemption. (From Schedule N-1)			1,000 —
21.	Credit for dependents. (From Schedule N-2)			
22.	Total of items 20 and 21			$ 5,072 75
23.	Taxable income (item 19 minus item 22)			

COMPUTATION OF TAX

DIVISION OF TAXABLE INCOME (See Instructions 24–29)	1. Amount	2. Rate of Tax	3. Amount of Tax
24. $0 to $5,000	$ 5,000 —	1%	$ 50 —
25. $5,000 to $10,000	72 75	1½%	1 10
26. $10,000 to $15,000		2%	
27. $15,000 to $20,000		2½%	
28. Over $20,000		3%	
29. Total taxable income (Items 24 to 28, column 1)	$ 5,072 75		
30. Total tax (Items 24 to 28, column 3)			$ 51 10

4 Opinion No. 247

BEFORE THE BOARD OF TAX APPEALS
FOR THE DISTRICT OF COLUMBIA

HENRY C. MURPHY, Petitioner,

v.

DISTRICT OF COLUMBIA, Respondent.

DOCKET NO. 346

RECEIVED AND FILED OCT. 24, 1940

BOARD OF TAX APPEALS FOR THE DISTRICT OF COLUMBIA

FINDINGS OF FACT AND OPINION

The petitioner paid to the District of Columbia an income tax for the calendar year 1939, and simultaneously filed with the Assessor a claim for refund. The Assessor disallowed such claim. The petitioner alleges that such action of the Assessor was erroneous for the reason that the petitioner was not domiciled in the District of Columbia at any time during the calendar year 1939, but was domiciled during that period in Detroit, Michigan.

FINDINGS OF FACT

The petitioner is an idividual. He is a single person. He resides in an apartment in the District of Columbia furnished and equipped with his own furniture and equipment.

The petitioner was born in New London, Connecticut in 1905. When he was five years old he moved with his parents to Los Angeles, California, where he resided until 1926, when he removed to Berkeley, California. In 1929 the petitioner completed his course of studies at Brown University. Immediately thereafter he accepted employment in a trust company in Detroit, Michigan, of which one of his former professors at Brown University was vice-president. The petitioner took up his residence in Detroit, living first in a rooming house and

later in an apartment. He became a registered voter in Wayne County, Michigan, and still is such; and has ever since voted in the elections and primaries there, the last time being in the Michigan primaries in September 1940.

5 With the exception of a year's leave of absence from the trust company, during which he again attended Brown University, the petitioner resided and was employed in Detroit from 1929 to 1935.

In January 1935, the petitioner accepted employment in the District of Columbia with the Treasury Department of the United States. Concerning such employment the residence of the petitioner in the District of Columbia, the petitioner testified as follows:

"Q. (By the Board) What sort of an appointment was it in 1935 that you came here to take?

"A. In January 1935, I took a job as economist in the Treasury Department which did not require Civil Service status. In July 1938, it was blanketed into Civil Service and my standing has been dated back to 1935, which was the time I originally came to Washington. I hope to retain the position I have in the Federal Government indefinitely but if I don't I will be going back to Detroit because that is where all my business connections are. I have kept in touch with the people with whom I was in business there and except for the employment here with the Federal Government, Detroit is my home. I registered in Michigan. They have a permanent registration law by which if you vote every two years you will be continued to vote permanently. I voted in the primaries in September.

"Q. Do your people live in California?

"A. Yes.

"Q. Have you a home in Detroit?

A. No, I have no property of my own there. I have lived there and voted there and it is the only place where I have connection other than with the Federal Govern-

ment. It is the place to which I will return if I ever become disemployed by the Government, which I hope will not happen. I would return to Detroit."

* * * * * * *

"A. I understood you to state you have no property in Detroit at the present time.

"A. That's correct.

"Q. What are the business associations which you have there and which you have referred to?

"A. During the time I was there I was an official of the trust company and I have continued in close contact with the bank and the officials ever since. When they come to Washington they call me and I have been given to understand that if I ever want to come back with them I can do so.

"Q. Have you any business connection with them now?

"A. No. It would be quite inappropriate that I should as an employee of the Federal Government. They told me I could come back any time I left the Government.

6 There are a great many people with whom I have kept in contact since I left Detroit and that is where I would go to get a job if I left the Government.

"Q. The question that naturally arises is that if your contacts in Detroit are so satisfactory and there is some degree of certainty with a standing officer of the banking institution there, why don't you go back to Detroit instead of staying in Washington?

"A. I am happy at my present job. I make $6,500 here and in Detroit I only made $6,000. My work is very interesting here in the Treasury and it is valuable experience. I would be happy to continue at the work in the Treasury. I don't think I can improve my work returning to Detroit. However, my present work would be helpful to me if I did return to Detroit.

"Q. In two instances you have moved from one place to another and changed your residence. You went to De-

troit and stayed there five years then came to Washington. What is the difference between your mental operation after you went to Detroit and when you first came to Washington as to the tenure of residence?

"A. When I first went to Detroit I thought of a career. I had been a student and I thought I was starting something new. When I came to Washington my original idea was to get two or three years' experience which would be valuable to me elsewhere.

"Q. But you have since abandoned that idea?

"A. I can say this—at the end of five years here I am no nearer leaving than when I came. You probably don't have the same feeling of permanency here that you would in Detroit.

"Q. You didn't have much of a feeling of permanency in Detroit when you left there to come to Washington, did you?

"A. No, although I can say that when I left Detroit to come to Washington it was sudden. It was an offer that I couldn't turn down.

"Q. After you were here two years you say you abandoned the idea you had which was somewhat nebulous?

"A. The idea was nebulous in the first place but I can not say it was abandoned. It has become attenuated. It depends on the circumstances.

"Q. If you were offered a position in Boston, New York, or St. Louis you—which is superior to your position here, you would go there, wouldn't you?

"A. I very likely would.

"Q. You are not insistent that such place be Detroit?

"A. I have a preference for Detroit. It is a place where I would fit in more easily.

"Q. Suppose your friend who is in Detroit moved to St. Louis to a bank there—

"A. He just came from Kansas City to Detroit after the banking holiday. These things are transient. I doubt

if any of us would hesitate to make the change if we could better ourselves.

"Q. But you would go there if you could better yourself?

"A. Yes.

"Q. Suppose you were offered a satisfactory position in New York, would you go there?

"A. Yes.

"Q. But until such satisfactory position presents itself you will continue at the Treasury Department, provided your work is as attractive as it is now?

"A. That's right.

"Q. The thing I meant to suggest, and what I understood you to say your attachment to Detroit was because of your friends there. If you had that contact elsewhere would you go there—if this friend of yours who is in the bank in Detroit were to go elsewhere would you go with him?

"A. That is correct."

The petitioner claims a "legal residence" in Detroit, Wayne County, Michigan.

After considering all of the evidence the Board finds as a fact that when the petitioner came to reside in Washington, upon his acceptance of employment in the Federal Government in 1935, he had an intention to remain and make his home in the District of Columbia for an indefinite period of time; and that such intention has ever since, and still does remain with him; and that if he has any intention to return and make his home in Detroit it is a floating intention.

The petitioner duly filed a return of his income for the calendar year 1939, and computed the tax therein to be $51.10. There is no dispute concerning such computation. On February 21, 1940 the petitioner paid one half of such tax, or the sum of $25.55, to the Collector of Taxes. Simultaneously he filed with the Assessor a claim for refund of such tax. The Board takes notice of the fact that such procedure was sug-

gested by the Assessor to those persons who questioned the propriety of the tax. On July 17, 1940, the Assessor disallowed the petitioner's claim for refund. This proceeding was filed Septeber 11, 1940.

8 OPINION

The only question of law here presented is whether or not, under the evidence and the findings of fact of the Board, the petitioner was domiciled in the District of Columbia on December 31, 1939, the last day of the taxable year. That question must be answered because the District of Columbia Income Tax Law imposes an income tax on those individuals only who are domiciled in the District of Columbia on the last day of the taxable year (Section 2).

The Board has found as a fact that when the petitioner came to the District in 1935 to accept Federal employment he had an intention to reside and make his home in the District for an indefinite period of time. The Board also has found that the petitioner was during 1939, and still is a registered voter in Wayne County, Michigan; and that he has voted regularly at elections and primaries therein. The petitioner claims what is generally known as a "legal residence" in Michigan. He has not, however, localized such residence in any dwelling house or other structure, or in any particular place in Michigan, except to say: "Detroit is my home."

The petitioner contends that the Board must hold that, under the decision of the Court of Appeals in *Sweeney* v. *District of Columbia*, ——— App. D. C. ———, 113 F. (2d) 25 (cert. Den. 60 S. Ct. 1082), he was on December 31, 1939 domiciled without the District of Columbia. The Board is of the opinion that such contention is sound, and that it must be held as a matter of law that the petitioner was not domiciled in the District on the last day of the taxable year. The Board can find no substantial or essential difference between the facts as found herein and those present in the *Sweeney* case. In that case the taxpayer was a Federal employee under the Civil

Service actually residing and making his home in the District of Columbia. The taxpayer there as the taxpayer here was a registered voter and actually and regularly voted in one of the states. In the *Sweeney* case the Board found as a fact, as it has found in this case, that the taxpayer upon accepting employment in Washington had an intention to remain and make his home in the District for an indefinite period of
9 time, and that if the taxpayer had any intention to return to his former home such intention was a floating intention. In this case the taxpayer has very frankly admitted that his "legal residence" is not localized in any dwelling house, structure or at any particular address, while in the *Sweeney* case the taxpayer claimed to reside "legally" at "467 Tremont Street, Boston, Massachusetts." Such distinction in that respect is without substance when it is considered that Sweeney in effect admitted that such address in Boston was not genuine, since it was an apartment house in which his mother had formerly resided, and in which neither he, nor any member of his family, nor anyone associated with him had resided for many years prior to the tax day in question in that case. The conclusion of law of this Board that Sweeney was domiciled in the District of Columbia was reversed by the Court of Appeals.

The Board, therefore, holds as a matter of law, on the authority of the *Sweeney* case, that on December 31, 1939, the petitioner was not domiciled in the District of Columbia. That being so, it follows necessarily that the income tax in the sum of $25.55 here in question was erroneously paid to the District of Columbia and must be refunded to the petitioner.

Decision will be entered for the petitioner.

JO MORGAN,
Member Sole

October 24, 1940.

10 BEFORE THE BOARD OF TAX APPEALS
FOR THE DISTRICT OF COLUMBIA

HENRY C. MURPHY, Petitioner,

v.

DISTRICT OF COLUMBIA, Respondent.

DOCKET NO. 346

RECEIVED AND FILED OCT. 24, 1940

BOARD OF TAX APPEALS FOR THE DISTRICT OF COLUMBIA.

DECISION

This proceeding came on to be heard upon the petition filed herein, and upon consideration thereof and of the evidence adduced at the hearing on said petition, it is by the Board this 24th day of October, 1940.

ADJUDGED AND DETERMINED That an income tax for the calendar year ending December 31, 1939, in the sum of $25.55 was erroneously collected from the petitioner by the District of Columbia, and that said petitioner is entitled to a refund of said total sum.

JO MORGAN,
Member Sole

11 BEFORE THE BOARD OF TAX APPEALS

HENRY C. MURPHY, Petitioner,

v.

DISTRICT OF COLUMBIA, Respondent.

DOCKET NO. 346

FOR THE DISTRICT OF COLUMBIA

RECEIVED AND FILED OCT. 28, 1940

BOARD OF TAX APPEALS FOR THE DISTRICT OF COLUMBIA

PETITION FOR REVIEW BY THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA OF A DECISION OF THE BOARD OF TAX APPEALS FOR THE DISTRICT OF COLUMBIA

The District of Columbia, petitioner in this cause, by Vernon E. West, Acting Corporation Counsel, hereby files its petition for review by the United States Court of Appeals for the District of Columbia of the decision of the Board of Tax Appeals for the District of Columbia rendered October 24, 1940, determining that an income tax for the calendar year ended December 31, 1939, in the sum of $25.55 was erroneously collected from the respondent by the District of Columbia, and that said respondent is entitled to a refund thereof.

I

The petitioner, hereinafter referred to as the District, is a municipal corporation.

II

NATURE OF THE CONTROVERSY

(a) The controversy involves the domicile of the respondent and the validity of the collection from the respondent by the collecting authorities of the District of an income tax for the calendar year 1939.

(b) The District of Columbia Income Tax Act levies a tax for the taxable year 1939 and succeeding taxable years upon the taxable income of every individual domiciled in the District of Columbia on the last day of the taxable year.

12 (c) The respondent duly reported his income for the calendar year 1939, and on February 21, 1940, paid to the Collector of Taxes, D. C., the sum of $25.55, being one-half of the tax of $51.10 computed upon his income for that year. At the same time, the respondent filed with the Assessor, D. C., a claim for refund of the sum paid. On July 17, 1940, the Assessor disallowed the respondent's claim for refund and so

notified the respondent. The proceeding before the Board of Tax Appeals was filed on September 11, 1940, and on October 24, 1940, the Board held that the tax was erroneously collected from the respondent and that he was entitled to a refund of the sum of $25.55 which he had paid.

III

The District, being aggrieved by the conclusions of law contained in the opinion of the Board of Tax Appeals, and by its decision entered in pursuance thereto, desires to obtain a review thereof by the United States Court of Appeals for the District of Columbia pursuant to the provisions of Section 4, Title IX, of the District of Columbia Revenue Act of 1937, as amended (Sec. 975, Title 20, D. C. Code, 1929, Supplement V), and Section 34 of the District of Columbia Income Tax Act (Sec. 980gg., Title 20, D. C. Code, 1929, Supplement V).

(s) VERNON E. WEST,
VERNON E. WEST,
Acting Corporation Counsel, D. C.
(s) GLENN SIMMON,
GLENN SIMMON,
Assistant Corporation Counsel, D. C.,
Attorneys for the Petitioner,
District Building.

DISTRICT OF COLUMBIA, *ss*:

Glenn Simmon, Assistant Corporation Counsel, D. C., being duly sworn, says that he is counsel of record in the above cause; that as such counsel he is authorized to verify
13 the foregoing petition for review; that he has read the said petition and is familiar with the statements contained therein; and that the statements made are true to the best of his knowledge, information and belief.

(s) GLENN SIMMON,
GLENN SIMMON,
Assistant Corporation Counsel, D. C.,

SUBSCRIBED AND SWORN TO before me this 28th day of October 1940.

(s) ADAM A. GIEBEL,
Notary Public in and for the District of Columbia.
My commission expires Sept. 15, 1944.

14 BEFORE THE BOARD OF TAX APPEALS
FOR THE DISTRICT OF COLUMBIA

DISTRICT OF COLUMBIA, Petitioner,

v.

HENRY C. MURPHY, Respondent.

DOCKET NO. 346

RECEIVED AND FILED OCT. 30, 1940

BOARD OF TAX APPEALS FOR THE DISTRICT OF COLUMBIA

STIPULATION

It is hereby stipulated by and between counsel for the District of Columbia, petitioner, and Henry C. Murphy, respondent, that the findings of fact by the Board of Tax Appeals in the above cause correctly state the evidence presented at the hearing before the Board in said cause.

(s) VERNON E. WEST,
Acting Corporation Counsel, D. C.,
VERNON E. WEST,
(s) GLENN SIMMON,
GLENN SIMMON,
Assistant Corporation Counsel, D. C.,
Attorneys for the Petitioner.
(s) HENRY C. MURPHY,
HENRY C. MURPHY,
Respondent.

15 BEFORE THE BOARD OF TAX APPEALS
FOR THE DISTRICT OF COLUMBIA

HENRY C. MURPHY, Petitioner,

v.

DISTRICT OF COLUMBIA, Respondent.

DOCKET NO. 346

RECEIVED AND FILED OCT. 30, 1940

BOARD OF TAX APPEALS FOR THE DISTRICT OF COLUMBIA

STATEMENT OF POINTS ON REVIEW

To: Mr. Henry C. Murphy,
2700 Q Street, N. W.,
Washington, D. C.,
Respondent.

The petitioner, District of Columbia, seeing review of the decision of the Board of Tax Appeals for the District of Columbia in the above cause, relies upon the following points on review:

(1) The Board of Tax Appeals erred in holding that the respondent was not domiciled in the District of Columbia on December 31, 1939, for purposes of taxation under the District of Columbia Income Tax Act.

(2) The Board of Tax Appeals erred in failing to hold that respondent was domiciled in the District of Columbia on December 31, 1939, for purposes of taxation under the District of Columbia Income Tax Act.

(3) The Board of Tax Appeals erred in holding that an income tax for the calendar year ended December 31, 1939, was erroneously collected from the respondent by the District and that respondent is entitled to refund thereof.

(s) VERNON E. WEST,
VERNON E. WEST,
Acting Corporation Counsel, D. C.,

(s) GLENN SIMMON,
GLENN SIMMON,
Assistant Corporation Counsel, D. C.,
Attorneys for the Petitioner,

Service of a copy of the foregoing statement of Point on Review acknowledged this 30 day of October, 1940.

(s) HENRY C. MURPHY,
Respondent.

16 BEFORE THE BOARD OF TAX APPEALS
FOR THE DISTRICT OF COLUMBIA

DISTRICT OF COLUMBIA, Petitioner,

v.

HENRY C. MURPHY, Respondent.

DOCKET NO. 346

RECEIVED AND FILED OCT. 30, 1940

BOARD OF TAX APPEALS FOR THE DISTRICT OF COLUMBIA

DESIGNATION OF RECORD

To the Clerk of the Board of Tax Appeals:

You are hereby requested to prepare, certify, and transmit to the Clerk of the United States Court of Appeals for the District of Columbia, with reference to the petition heretofore filed, the transcript of the record in the above cause prepared and transmitted as required by law and by the rules of said Court, and to include in said transcript of record the following documents, or certified copies thereof, to-wit:

(1) Pleadings before the Board of Tax Appeals.
(2) Findings of Fact and Opinion of the Board of Tax Appeals.
(3) Decision of the Board of Tax Appeals.
(4) Petition for Review, with date of filing.
(5) Stipulation of evidence.

(6) Statement of Points.
(7) This Designation of Record.

(s) VERNON E. WEST,
VERNON E. WEST,
Acting Corporation Counsel, D. C.,
(s) GLENN SIMMON,
GLENN SIMMON,
Assistant Corporation Counsel, D. C.,
Attorneys for the Petitioner.

Service of a copy of the above Designation of Record acknowledged this 30 day of October, 1940.

(s) HENRY C. MURPHY,
HENRY C. MURPHY,
Respondent.

17 BOARD OF TAX APPEALS FOR THE DISTRICT OF COLUMBIA

DISTRICT OF COLUMBIA, Petitioner,

v.

HENRY C. MURPHY, Respondent.

DOCKET No. 346

CERTIFICATE

I, PHYLLIS R. LIBERTI, Clerk of the Board of Tax Appeals for the District of Columbia, do hereby certify that the foregoing pages, 1 to 17, inclusive, contain and are a true copy of the transcript of record, papers, and proceedings on file and of record in my office as called for by the Designation of Record in the Petition for Review in the appeal as above numbered and entitled.

IN TESTIMONY WHEREOF, I hereunto set my hand and affix the seal of the Board of Tax Appeals for the District of Columbia, this 31st day of October, 1940.

PHYLLIS R. LIBERTI,
Clerk, Board of Tax Appeals for the
District of Columbia

Endorsed on cover: No. 7780. District of Columbia, Petitioner, vs. Henry C. Murphy, respondent. United States Court of Appeals for the District of Columbia. Filed Nov. 1, 1940 Joseph W. Stewart, Clerk.

[fol. 19] Monday, March 10th, A. D. 1941.

* * * * * * *

No. 7779

DISTRICT OF COLUMBIA, Petitioner,

vs.

PAUL M. DEHART;

No. 7780

DISTRICT OF COLUMBIA, Petitioner,

vs.

HENRY C. MURPHY

The argument in the above entitled cause was commenced by Mr. Glenn Simmon, attorney for petitioners, continued by Messrs. Paul M. DeHart pro se No. 7779 and Harry R. Turkel, attorney for respondent in No. 7780, and concluded by Mr. Glenn Simmon, attorney for petitioners.

* * * * * * *

[fol. 20] UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

No. 7780

DISTRICT OF COLUMBIA, Petitioner

v.

HENRY C. MURPHY

Petition to Review the Decision of the Board of Tax Appeals for the District of Columbia

Decided March 24, 1941

Richmond B. Keech, Corporation Counsel, Vernon E. West, Principal Assistant Corporation Counsel, and Glenn Simmon, Assistant Corporation Counsel, all of Washington, D. C., for petitioner.

Harry R. Turkel, of Washington, D. C., and Henry C. Murphy, pro se, for respondent.

By leave of Court, Phineas Indritz filed a brief as amicus curiae.

Before Stephens, Miller and Vinson, Associate Justices

Miller, Associate Justice:

This is a companion case to No. 7779, decided this day. The applicable statute is the same;[1] the same issue of law is presented, and, in our view, the case is controlled by the reasoning of the decision of this court in Sweeney v. District of Columbia.[2] However, in view of certain differences in the facts found by the Board of Tax Appeals, this separate opinion is filed. In the present case, the Board's findings reveal that respondent Murphy graduated from college in 1929; immediately thereafter accepted employment in Detroit, Michigan; took up residence in Detroit; "became a registered voter in Wayne County, Michigan, and still is such; and has ever since voted in the elections and primaries there, the last time being in the Michigan primaries in September 1940." In January 1935, respondent accepted employment in the District of Columbia with the Treasury Department of the United States; was blanketed into Civil [fol. 21] Service in 1938, and is still in government service. Respondent is an unmarried man; he resides in an apartment in the District of Columbia, furnished with his own furniture and equipment; his parents live in California. Concerning his intentions he testified: "I hope to retain the position I have in the Federal Government indefinitely but if I don't I will be going back to Detroit because that is where all my business connections are. I have kept in touch with the people with whom I was in business there and except for the employment here with the Federal Government, Detroit is my home * * *. Q. Have you a home in Detroit? A. No, I have no property of my own there. I have lived there and voted there and it is the only place

[1] Section 2 (a) of the District of Columbia Income Tax Act (Act of July 26, 1939, 53 Stat. 1087, D. C. Code (Supp. V, 1939) tit. 20, § 980a).

[2] — App. D. C. —, 113 F. (2d) 25, cert. denied, 310 U. S. 631.

where I have connection other than with the Federal Government. It is the place to which I will return if I ever become disemployed by the Government, which I hope will not happen, I would return to Detroit."

The government relies particularly upon certain testimony of respondent—to challenge the finding of the Board that he was not domiciled within the District of Columbia on December 31, 1939—as follows:

Q. * * * What is the difference between your mental operation after you went to Detroit and when you first came to Washington as to the tenure of residence?

A. When I first went to Detroit I thought of a career. I had been a student and I thought I was starting something new. When I came to Washington my original idea was to get two or three years' experience which would be valuable to me elsewhere.

Q. But you have since abandoned that idea?

A. I can say this—at the end of five years here I am no nearer leaving than when I came. You probably don't have the same feeling of permanency here that you would in Detroit.

Q. You didn't have much of a feeling of permanency in Detroit when you left there to come to Washington, did you?

A. No, although I can say that when I left Detroit to come to Washington it was sudden. It was an offer that I couldn't turn down.

Q. After you were here two years you say you abandoned the idea you had which was somewhat nebulous?

A. The idea was nebulous in the first place but I can not say it was abandoned. It has become attenuated. It depends on the circumstances.

Q. If you were offered a position in Boston, New York, or St. Louis you—which is superior to your position here, you would go there, wouldn't you?

A. I very likely would.

Q. You are not insistent that such place be Detroit?

A. I have a preference for Detroit. It is a place where I would fit in more easily.

Q. Suppose your friend who is in Detroit moved to St Louis to a bank there——

A. He just came from Kansas City to Detroit after the banking holiday. These things are transient. I doubt if

any of us would hesitate to make the change if we could better ourselves.

[fol. 22] Q. But you would go there if you could better yourself?

A. Yes.

Q. Suppose you were offered a satisfactory position in New York, would you go there?

A. Yes.

Q. But until such satisfactory position presents itself you will continue at the Treasury Department, provided your work is as attractive as it is now?

A. That's right.

Q. The thing I meant to suggest, and what I understood you to say your attachment to Detroit was because of your friends there. If you had that contact elsewhere would you go there—if this friend of yours who is in the bank in Detroit were to go elsewhere would you go with him?

A. That is correct.

Although the evidence may be more persuasive in the present case than in the DeHart case, nevertheless, we see no sufficient reason to disturb the findings and determination of the Board. It is common knowledge among highly trained professional and business people that when new opportunities are presented, changes of residence and of domicil may result. But that the respondent in the present case frankly stated his willingness to consider, hypothetically, advantageous and future business possibilities, is not sufficient to offset his positive statement that Detroit is his home; that he intends to return there if and when he becomes disemployed by the government; or to offset the equally convincing proof of intention to maintain his state allegiance while engaged in federal service, which results from the fact that he has maintained his status as a registered voter and "has ever since voted in the elections and primaries there." As we said in the Sweeney case, the rendering of government service in the District of Columbia, which was set apart especially for the purposes of the national government, should not too casually be "visited with the penalty of severing state allegiance or making it dubious." Neither should abandonment of domicil be held

to have resulted unless the federal employee "gives clear evidence of his intention to forego his state allegiance."[3]

Affirmed.

[fol. 23] Monday, March 24th, A. D. 1941.

* * * * * * *

No. 7780. January Term, 1941

District of Columbia, Petitioner,

vs.

Henry C. Murphy

Petition for review from the Board of Tax Appeals for the District of Columbia.

This cause came on to be heard on the transcript of the record from the Board of Tax Appeals for the District of Columbia and was argued by counsel.

On consideration whereof, It is now here ordered, adjudged and decreed by this Court that the decision of the said Board of Tax Appeals in this cause be, and the same is hereby, affirmed.

Per Mr. Justice Miller.

March 24, 1941.

* * * * * * *

[fol. 24] [Stamp:] United States Court of Appeals for the District of Columbia. Filed Apr. 1, 1941. Joseph W. Stewart, Clerk.

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[3] Sweeney v. District of Columbia, — App. D. C. —, —, 113 F. (2d) 25, 32, cert. denied, 310 U. S. 631.

In the United States Court of Appeals for the District of Columbia, April Term, 1941

No. 7780

District of Columbia, Petitioner,

v.

Henry C. Murphy, Respondent

Designation of Record

The Clerk will please prepare a transcript on application for certiorari to the Supreme Court of the United States in the above-entitled cause, including therein the following:

1. The printed record in the Court of Appeals.
2. Minute entry showing argument of cause.
3. Opinion of the Court.
4. The judgment or decree.
5. This designation.
6. Clerk's certificate.

Richmond B. Keech, Corporation Counsel, D. C., Vernon E. West, Principal Assistant Corporation Counsel, D. C., Glenn Simmon, Assistant Corporation Counsel, D. C., Attorneys for the Petitioner, District of Columbia.

Service of a copy of the foregoing designation of record acknowledged this 1 day of April, 1941.

Harry R. Turkel, Attorney for the Respondent.

[fol. 25] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 26] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed May 26, 1941

The petition herein for a writ of certiorari to the United States Courts of Appeals for the District of Columbia is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Stone and Mr. Justice Roberts took no part in the consideration and decision of this application.

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No. _____

DISTRICT OF COLUMBIA,

Petitioner

vs.

HENRY C. MURPHY,

Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA AND BRIEF IN SUPPORT THEREOF

RICHMOND B. KEECH,
Corporation Counsel, D. C.,
VERNON E. WEST,
Principal Assistant Corporation Counsel, D. C.,
GLENN SIMMON,
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District Building.

CENTRAL DUPLICATING DIVISION—GOVERNMENT OF THE DISTRICT OF COLUMBIA

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No.

DISTRICT OF COLUMBIA,

Petitioner,

vs.

HENRY C. MURPHY,

Respondent.

PETITION FOR A WRIT OF CERTIORARI AND BRIEF IN SUPPORT THEREOF

PETITION

To the Honorable, the Chief Justice of the United States, and the Associate Justices of the Supreme Court of the United States:

Your petitioner, the District of Columbia, respectfully shows and represents unto Your Honors that:

STATEMENT OF MATTER INVOLVED

The District of Columbia Income Tax Act imposes a tax upon the income of individuals domiciled in the District of Columbia on the last day of the taxable year. The respondent paid to the District of Columbia an income tax for the cal-

ondar year 1939. At the time of payment of such tax, respondent filed with the Assessor, D. C., a claim for refund of the amount paid, in which claim it was alleged that the respondent was domiciled in Detroit, Michigan, on December 31, 1939. On August 17, 1940, the Assessor disallowed the claim and sent the respondent, by registered mail, a notice of such disallowance. On September 16, 1940, the respondent appealed from the action of the Assessor to the Board of Tax Appeals for the District of Columbia (R. 1-2). On October 24, 1940, the Board of Tax Appeals held that the respondent was not domiciled in the District on the taxable date involved, that the tax was erroneously collected by the District, and the respondent was entitled to a refund thereof (R. 11).

The District petitioned the United States Court of Appeals for the District of Columbia for a review of the decision of the Board of Tax Appeals. On March 24, 1941, the Court of Appeals affirmed the decision of the Board of Tax Appeals (R. 19-23).

JURISDICTION

The judgment of the United States Court of Appeals for the District of Columbia was entered on March 24, 1941. The jurisdiction of this Court to issue the writ applied for is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED

1. Whether the domicile of a federal employee is to be determined upon different principles of law than those applicable to the determination of domicile of an individual engaged in private employment;

2. Whether there is a presumption requiring strong evidence to overcome it that an employee of the Federal Government residing in the District of Columbia is domiciled in the state where he formerly resided;

3. Whether the domicile of a federal employee residing in the District of Columbia is to be determined upon different principles of law than those used in determining the domicile of such an employee residing in one of the states;

4. Whether respondent was domiciled in the District of Columbia for purposes of taxation on December 31, 1939.

REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT

1. The United States Court of Appeals for the District of Columbia in this case has decided a question of general importance which has not been, but should be settled by this Court.

(a) The question is of great importance to the District of Columbia for the reason that the District of Columbia Income Tax Act levies a tax upon the income of individuals "domiciled" in the District, and because the District of Columbia Estate Tax Law imposes a tax upon the transfer of the estate of every individual who shall die a resident of the District.

(b) The question is of great importance to all employees of the Federal Government residing in the District and to other government employees residing in a jurisdiction other than the state or territory of original domicile. In such cases, the importance of the question is not limited to liability for payment of taxes but extends to matters relating to the administration of estates, the granting of divorces, and the like.

(c) The question is of great importance to persons who have come from the various states and are residing in the District and engaged in private employment.

2. The Court of Appeals has not given proper effect to applicable decisions of this Court.

Wherefore, Your petitioner prays the allowance of a Writ of Certiorari to the United States Court of Appeals for the District of Columbia in this cause, and entitled *District of Columbia, Petitioner* v. *Henry C. Murphy, Respondent*, No. 7780.

that said cause may be reviewed and determined by this Court, and that the judgment of the said Court of Appeals may be reversed and set aside; and for such further relief and remedy in the premises as this Court may deem meet and proper.

DISTRICT OF COLUMBIA,
Petitioner.

By:
RICHMOND B. KEECH,
Corporation Counsel, D. C.,
VERNON E. WEST,
Principal Assistant Corporation Counsel, D. C.,
GLENN SIMMON,
Assistant Corporation Counsel, D. C.,
Attorneys for the Petitioner,
District Building.

BRIEF IN SUPPORT OF PETITION FOR CERTIORARI

OPINIONS BELOW

The opinion of the Board of Tax Appeals for the District of Columbia (R. 4-10) is not reported. The opinion of the United States Court of Appeals for the District of Columbia (R. 19-23) is not yet reported.

JURISDICTION

The grounds upon which the jurisdiction of this Court is invoked are stated in the petition.

STATEMENT OF THE CASE

Pursuant to the provisions of the District of Columbia Income Tax Act imposing taxes upon the income of individuals domiciled in the District on the last day of the taxable year the respondent reported his income for the calendar year 1939 and paid the first installment of the tax computed thereon. Simultaneously with such payment, the respondent filed a claim for refund of the amount paid, alleging that he was not domiciled in the District on the taxable date. On August 17, 1940, the Assessor, D. C., notified respondent of the disallowance of his claim. On September 16, 1940, the respondent, acting in accordance with the provisions of Section 34 of the District of Columbia Income Tax Act (Sec. 980gg., Title 20, D. C. Code, 1929, Supplement V), appealed from the action of the Assessor to the Board of Tax Appeals for the District of Columbia.

The respondent is an individual. At the time of the hearing before the Board of Tax Appeals he was a single person re-

siding in an apartment in the District of Columbia furnished and equipped with his own furniture and equipment.

The respondent was born in New London, Connecticut, in 1905. When he was five years old he moved with his parents to Los Angeles, California, where he resided until 1926, when he removed to Berkeley, California. In 1929, the respondent completed his course of studies at Brown University. Immediately thereafter he accepted employment in a trust company in Detroit, Michigan, of which one of his former professors at Brown University was vice-president. The respondent took up his residence in Detroit, living first in a rooming house and later in an apartment. He became a registered voter in Wayne County, Michigan, and still is such, and has ever since voted in the elections and primaries there, the last time being in the Michigan primaries in September, 1940. With the exceptions of a year's leave of absence from the trust company, during which he again attended Brown University, the respondent resided and was employed in Detroit from 1929 to 1935. He did not then, and does not now, own any property in the State of Michigan (R. 4, 5).

In January, 1935, the respondent accepted employment in the District of Columbia as an economist in the Treasury Department, and has since continued such employment and resided in the District (R. 5).

With respect to his intention, the respondent expressed a preference for his present employment over that which he had in Detroit, and stated that he hoped to retain the position he now has indefinitely. He testified that if his employment with the Federal Government were terminated, he would return to Detroit unless a more satisfactory position should be offered him elsewhere. He would be more likely to return to Detroit because his business connections and friends are located there. If such friends should remove to another city or state, or if he should receive a more attractive offer to work in some other city or section of the country, he would go there. The idea of returning to Detroit, which was nebulous in the first

place, has become attenuated, and whether he would so return depends upon the circumstances (R. 6, 7, 8).

The Board of Tax Appeals found as a fact "that when the petitioner (respondent here) came to reside in Washington, upon his acceptance of employment in the Federal Government in 1935, he had an intention to remain and make his home in the District of Columbia for an indefinite period of time; and that such intention has ever since, and still does remain with him; and that if he has any intention to return and make his home in Detroit it is a floating intention" (R. 8). The Board, however, held that under the decision of the Court of Appeals in *Sweeney* v. *District of Columbia*[1], the respondent was not domiciled in the District of Columbia on December 31, 1939 (R. 9-10).

The Court of Appeals sustained the Board's finding that the respondent had an intention to remain and make his home in the District and affirmed the Board's decision that he was, nevertheless, domiciled without the District.

SPECIFICATION OF ERRORS

The United States Court of Appeals for the District of Columbia erred:

I. In holding that the respondent was not domiciled in the District of Columbia for purposes of taxation on December 31, 1939.

II. In holding that the domicile of an individual employed by the Government is to be determined upon different principles of law than those applicable to the determination of the domicile of an individual engaged in private employment.

III. In holding that there is a presumption, requiring strong evidence to overcome it, that an individual who comes to the District from one of the states and resides here for many years while employed permanently or indefinitely by the United States Government retains his domicile for all purposes in the state from which he comes.

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[1] ____ App. D. C. ____, 113 F. (2d) 25, cert. den. 310 U. S. 631.

IV. In holding that an individual who has physically removed to the District and has an intention to remain and make his home here indefinitely nevertheless retains his domicile for all purposes in the state where he formerly resided because of his employment by the Federal Government.

STATUTES INVOLVED

Section 2 (a) of the District of Columbia Income Tax Act (Sec. 980a., Title 20, D. C. Code, 1929, Supplement V) provides as follows:

> "TAX ON INDIVIDUALS.—There is hereby levied for each taxable year upon the taxable income of every individual domiciled in the District of Columbia on the last day of the taxable year a tax at the following rates:"

SUMMARY OF ARGUMENT

Conjunction of physical presence and animus manendi in the new location establishes a change of domicile.

There is no question concerning the respondent's physical presence in the District of Columbia.

The question of intention to remain in the District is one of pure fact. The Board of Tax Appeals found as a fact that when the respondent came to reside in the District upon his acceptance of federal employment in 1935, and on the taxable date here involved, the respondent had an intention to remain and make his home in the District of Columbia for an indefinite period of time. The Court of Appeals sustained the Board's finding. Domicile in the District follows as a matter of law.

The domicile of an employee of the Federal Government for purposes of taxation should be determined under the same general rules applicable to persons in private employment.

A person is presumed to be domiciled at the place where he lives.

Even if the test laid down by the Court of Appeals in the Sweeney case [2] were applicable, the evidence clearly shows that respondent here was domiciled in the District of Columbia for purposes of taxation on December 31, 1939.

ARGUMENT

I

Respondent was domiciled in the District of Columbia for purposes of taxation on December 31, 1939.

In 1935 the respondent came to reside in the District of Columbia. Since that time he has had no home or dwelling place except the one which he has continuously maintained in the District. When a person has one home and only one home, his domicile is the place where his home is. *Restatement, Conflict of Laws*, Chapter 2, Section 12, Page 24.

Domicile is defined in 9 *R. C. L.* 538 as follows:

> "The term 'domicile' in its ordinary acceptation means a place where a person lives or has his home. In a strict legal sense that is properly the domicile of a person where he has his true, fixed, permanent home and principal establishment, and to which place he has, whenever he is absent, the intention of returning. In a sense domicile is synonymous with home, or residence, or 'the house of usual abode'."

See also:

Texas v. *Florida*, 306 U. S. 398;

Jacobs, Law of Domicile, Section 70, Page 113, and Section 72, Page 120;

Kennan on Residence and Domicile, Section 16, Page 37;

Goodrich on Conflict of Laws, Section 25.

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[2] __ App. D. C. __, 113 F. (2d) 25, cert. den. 310 U. S. 631.

The Board of Tax Appeals found as a fact that when the respondent came to reside in the District in 1935 he had an intention to remain and make his home in the District for an indefinite period of time and that such intention has ever since and still does remain with him (R. 8). The Board's findings were accepted by the Court of Appeals (R. 22) and domicile in the District of Columbia follows as a matter of law.

In *Story, Conflict of Laws*, Section 46, the rule is stated as follows:

> "If a person has actually removed to another place with an intention of remaining there for an indefinite time, and as a place of fixed present domicile, it is deemed to be his place of domicile, notwithstanding he may entertain a floating intention to return at some future period."

The rule announced by Story seems to have been almost universally adopted.

Gilbert v. *David*, 235 U. S. 561;

Mitchell v. *United States*, 21 Wall. 350, 22 L. Ed. 584;

Rosenberg v. *Comm. of Internal Revenue*, 59 App. D. C. 178, 37 F. (2d) 808;

Newman v. *United States Ex Rel. Frizzell*, 43 App. D. C. 53;

Bradstreet v. *Bradstreet*, 18 D. C. Rep. (7 Mackey) 229;

Ringgold v. *Barley*, 5 Md. 186, 59 Am. Dec. 107;

Klutts v. *Jones*, 21 N. Mex. 720, 158 P. 490, L.R.A. 1917A 291;

Fetker v. *Henderson*, 102 A. (N. H.) 623, L.R.A. 1918E 512;

Kennan on Residence and Domicile, Section 127, Page 257;

The intention, however, to return to the domicile of nativity, or one acquired, must be fixed, absolute, and unconditional. A mere floating intention to return at some future

period or upon the happening of some uncertain event is not sufficient. The intent to return must not depend upon inclination or be controlled by future events.

Sparks v. *Sparks*, 114 Tenn. 566, 88 S. W. 173, 174.
Story, Conflict of Laws, Section 46.

The Court of Appeals, in the *Sweeney* case, apparently affirmed the rule that conjunction of physical presence and *animus manendi* establishes a change of domicile to the new location. However, in the instant case where there was both physical presence and intention to remain in the District, the Court of Appeals held the respondent to be domiciled in Michigan even though his intention, if any, to return there is a mere floating intention. The only evidence supporting even a "floating" intention to return to Michigan was respondent's statements at the hearing to the effect that if he should become disemployed he would most likely seek employment in Detroit, Michigan for the reason that his business contacts are presently located at that place. It seems evident that respondent did not intend to retain his domicile in Michigan.

The intention required for the acquisition of a domicile of choice is an intention to make a home in fact, and not an intention to acquire a domicile. *Restatement, Conflict of Laws*, Chapter 2, Section 19, Page 38. See also: *Mitchell* v. *United States, supra; Texas* v. *Florida, supra.* The nature of the intention required for the acquisition of a domicile of choice is clearly pointed out by Mr. Justice Holmes in the case of *Dickinson* v. *Inhabitants of Brookline*, 181 Mass. 195, 63 N.E. 331, as follows:

> "Of course the argument for the plaintiff is that his domicile is presumed to continue until it is proved to have been changed, that it could be changed only by his intent and overt act, and that he expressly denied the intent. The ambiguity is in the last proposition. The plaintiff

did not deny that he intended to keep on living as he had lived for the last few years and if the jury saw fit to find, as no doubt they did, that he did intend to do so, then he did intend the facts necessary to constitute a change in domicile, and what he did not intend was simply that those facts should have their inevitable legal consequence."

See also: *Jacobs, Law of Domicile*, Section 148, Pages 213-215.

Respondent also testified that he is a registered voter in Wayne County, Michigan, and regularly votes in the elections and primaries there. While exercise of the elective franchise is important to be considered, as a general rule it is not conclusive, and when overbalanced by other circumstances, the fact of voting may be of slight importance. 19 *C. J.* 436, 437.

See also:

Gaddis v. *Mann*, 147 F. 955;
Bradstreet v. *Bradstreet, supra;*
In re Sedgwick, 223 F. 655;
In re Trowbridge's Estate, 266 N. Y. 283, 194 N. E. 756;
Dickinson v. *Inhabitants of Brookline, supra;*
Wagner v. *Scurlock*, 166 Md. 284, 170 A. 539, 542;
Keenan on Residence and Domicile, Section 78, Pages 158-161;
Wharton, Conflict of Laws, Section 63.

In considering the question of the domicile of one who has removed from one state to another, the fact that the right of suffrage has been exercised in the former state is entitled to much greater weight than when considering the domicile of one who has removed from a state to the District of Columbia. Ordinarily one wishes to take part in the political activities of the state in which he intends to live and therefore when one

continues to vote in the state of his former residence this may create a presumption of a fixed intention to return to that state. But the right of suffrage is denied residents of the District. It is but natural that one who removes from a state to the District with the intention of remaining here permanently should, nevertheless, endeavor to retain his right of suffrage as long as possible. It may be that, under the law of Michigan, a former resident of that state may continue to exercise a right of suffrage there until he has actually voted elsewhere. That question, however, is not before this Court. But, in any event, it is plain that the State of Michigan cannot accord a domicile in that state to a resident of the District of Columbia merely by permitting him to vote in its elections.

Unless the domicile of an individual employed by the Federal Government is to be determined upon principles of law different from those used in determining the domicile of an individual in private employment, it clearly appears that the argument that respondent was domiciled in the District of Columbia on the date in question is supported by substantially all authority, including opinions of this Court. The opinion of the Court of Appeals, however, departs from the well-defined principles for determining domicile in three respects: First, by placing Government employees in a special class and holding that the domicile, for purposes of taxation, of an individual so employed is to be determined upon different principles of law than those applicable to the determination of the domicile of other individuals. Second, by holding that a person who voluntarily comes to the District and obtains employment here with the Federal Government is presumed to be domiciled in the state from which he comes and that strong evidence is required to overcome such presumption. Third, by holding that a Government employee maintaining his only home in the District and having an intention to remain and make his home here indefinitely is, nevertheless, domiciled for all purposes in the state where he formerly resided.

II

The domicile of an employee of the Federal Government for purposes of taxation should be determined under the same general rules applicable to persons in private employment.

The Court of Appeals has held that different rules are to be used in determining the domicile, for purposes of taxation, of an employee of the Federal Government than those used in determining the domicile of an individual in private employment. The Court has not only failed to recognize a distinction between *civil* and *political* status but has held that the latter determines the former. In other words, the Court has said that the personal rights of an individual in Government employment, i.e., the law which determines his majority or minority, his marriage, succession, testacy or intestacy, and the like, depends not upon the place where he lives and has his home but upon the place where he formerly resided and acquired the right to vote. Whether an individual who has abandoned his residence in a state and accepted Federal employment and established residence in the District of Columbia may continue to retain a political status in the state where he formerly resided is a matter to be determined by the laws of such state. The laws of most states allow persons in Government service to continue to vote in the elections of such states. Since an individual has no political status in the District of Columbia it is proper and desirable that he be allowed to retain his citizenship or *political* domicile in the state of his former residence. There is, however, no corresponding reason why an individual residing permanently, or at least indefinitely, in the District of Columbia should have a *civil* status or domicile for all purposes in a state where he may never again reside, and it does not appear that the state laws generally accord such a status or domicile to individuals who have been absent therefrom for long periods in Government

service.[3] And the fact that such individuals retain their *political* status and continue to vote in their respective states of former residence is not inconsistent with the fact that they acquire a *civil* status in the District of Columbia where they live, enjoy the benefits and protection of local government, by the laws of which District their personal rights should be determined and in which place they are legally domiciled.[4]

In imposing the income tax upon individuals domiciled in the District, Congress apparently recognized that domicile in

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[3] In *Sparks* v. *Sparks*, 114 Tenn. 666, 88 S. W. 173, one who took his family to Washington and lived there 22 years was held to have lost his citizenship, residence and domicile in Tennessee although he occasionally returned to that state and had voted and paid taxes there and had repeatedly expressed his intention of returning to that state in case he should lose his position.

[4] There is a clear distinction between citizenship, on the one hand, and residence or domicile on the other. *Keenan on Residence and Domicile*, Section 62, Pages 136-137, citing among others the case of *Brown* v. *United States*, 5 C. Cls. 571, 579, wherein the Court stated: "We cannot accept the doctrine that the matter of domicile affects the fact of citizenship nor that a mere foreign residence, of itself, can work a forfeiture of political rights."

"Both residence and domicile have to do with a certain set of relations between a person and a place, while citizenship is based upon one's political status which is quite a different thing." *Keenan on Residence and Domicile*, Section 61, Page 135.

"Allegiance and domicile are entirely distinct things. They may exist apart; they may exist together; but the one does not necessarily involve the other." *Jacobs, Law of Domicile*, Section 144, Pages 208, 209.

The distinction is clearly drawn in *Shaeffer* v. *Gilbert*, 73 Md. 66, 20 A. 434, where it is said:

"But there is, it seems to us, a broad distinction between domicile, in a legal and technical sense, by which one's civil status and the rights of persons and property are determined, and residence required by the Constitution as a qualification for the exercise of political rights. 'Domicile', in a legal sense, has, as we all know, a fixed and definite meaning; and yet the word 'domicile' is nowhere to be found in the Constitution. * * * The framers of the Constitution were dealing with the question of residence for political purposes, which, although analogous in many respects, is not to be understood in the same sense as domicile in law, by which the rights of persons and property are governed."

the District for purposes of taxation is independent of the right to vote in one of the states.[5]

The Court of Appeals' ruling does not purport to have application to all persons in the District but is limited to employees of the Federal Government. Apparently, the Court does not intend that its ruling should have application to all employees of the Federal Government, but should be limited to such employees residing in the District of Columbia. There would appear to be no logical argument supporting a special rule regarding employees of the Federal Government which applies to only a limited number of such individuals. Any special rule for determining the domicile of Federal employees should apply to all such employees alike. Certainly it is not rea-

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[5] Mr. Nichols, the chairman of the House conferees on the bill, was absent from the conference and the Conference Report and explanation of the bill was made by Mr. Dirksen, a member of the Fiscal Affairs Subcommittee of the House District Committee and one of the conferees. In the course of such report to the members of the House of Representatives there occurred a discussion of the meaning of the term "domiciled" as used in the bill, wherein Mr. Dirksen stated his own views and those of the conferees as follows (84 Cong. Rec., July 12, 1939, 12528):

Mr. Dirksen: * * * I think one can have a taxable domicile in the District of Columbia and still preserve his voting rights back home.

* * * * * * *

Mr. McCormack: I think this is a point that should be cleared up. Suppose a person comes from Boston, and the same thing applies to any other city in the country or any other State like Massachusetts, and his yearly employment is in the District of Columbia. He is living here all the year, but he registers for voting purposes in Massachusetts. He cannot vote here and we all know the reasons why, but he wants to exercise his right of suffrage and if he registers in Massachusetts, does he still have to pay the income tax here?

Mr. Dirksen: That precise question was raised in the course of the conference.

(Here the gavel fell.)

Mr. Nichols: Mr. Speaker, I yield the gentleman 5 additional minutes.

Mr. Dirksen: I will say to the gentleman from Massachusetts that I raised that precise question in the course of the conference. We had it up at considerable length with all the tax advisers to this committee, as well as the conference committee, and we were of the opinion you could be taxed here, and yet you can vote back home because you have a taxable domicile in the District. It does not interfere with your right, if you pay your poll tax in Massachusetts, to vote back there and still pay your income tax here. The situation the gentleman alludes to might very conceivably arise in connection with the case of a family that has lived here for 20 or 30 years. They continue to vote back there; but is there any reason why it should not be held that they have a taxable domicile in the District of Columbia since this is the place where they live?

sonable that the thousands of Federal employees residing in nearby Virginia and Maryland must have their domiciles determined on a different basis than those Federal employees residing in the District.

There are more than 1,151,000 civil employees of the United States, of which number approximately 150,000 are employed in the District. Many of those employed in the District reside in nearby Maryland and Virginia. The rule laid down by the Court of Appeals necessarily affects all Federal employees who have removed from the jurisdiction of original domicile for the purpose of such employment, and the already perplexing problem of determining domicile is thereby further complicated for a substantial number of these 1,151,000 Federal employees.

There is no rule of law which supports the view that domicile or civil status of an individual employed by the United States is to be determined by special rules not applicable to individuals in private employment. The respondent here, like substantially all Government employees, was under no more compulsion to live in the District than an employee of a corporation or other employer. Such individuals are not under real compulsion such as are soldiers, prisoners, minors and lunatics. Respondent came to the District voluntarily to seek employment and has remained here through preference for more than 6 years and intends to remain here and make the District his home permanently, or at least indefinitely. Although he may elect to retain his citizenship and vote in the State of Michigan, he is, nevertheless, domiciled in the District for purposes of taxation.

III

A person is presumed to be domiciled at the place where he lives.

Where a person lives is taken *prima facie* to be his domicile, and the burden of disproving such domicile is on the person who denies it.

Anderson v. *Watt*, 138 U. S. 694;
Ennis v. *Smith*, 14 How. 400, 423;
Newman v. *United States ex rel. Frizzell*, *supra*;
Bradstreet v. *Bradstreet*, *supra*;
Gallagher v. *Gallagher* (Tex. Civ. App.), 214 S. W. 516;
Dodd v. *Dodd* (Tex. Civ. App.), 15 S. W. (2d) 686;
Harrison v. *Harrison*, 117 Md. 607, 84 A. 57;
9 *R. C. L.* 541, 557;
Restatement, *Conflict of Laws*, Chap. 2, Sec. 12, Page 24;
Story, *Conflict of Laws*, Sec. 46, Page 50;
Keenan on Residence and Domicile, Section 172, Page 327;
Dicey, *Law of Domicile*, Page 9.

In the case of *Sweeney* v. *District of Columbia*, *supra*, the Court of Appeals held that although there was a presumption of continuity of state domiciliation during Federal employment, such presumption could be overcome. In the instant case, the Board of Tax Appeals held that the respondent had an intention to remain and make his home in the District. The Court of Appeals sustained the Board's finding of intention to remain, but, nevertheless, held respondent to be domiciled without the District. The effect of the Court's ruling in the case at bar is that the alleged presumption cannot be overcome; in other words, that the domicile of an individual in Government service in the District of Columbia is to be determined not by the facts but solely by his statements as to the place of his domicile.

CONCLUSION

It is therefore respectfully submitted that this case is one of general importance which should be decided by this Court and that a Writ of Certiorari should be granted and this Court should review the decision of the United States Court of Ap-

peals for the District of Columbia and finally reverse said decision.

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. 991

DISTRICT OF COLUMBIA,

Petitioner,

v.

HENRY C. MURPHY,

Respondent.

BRIEF FOR PETITIONER

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CENTRAL DUPLICATING DIVISION—GOVERNMENT OF THE DISTRICT OF COLUMBIA

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OPINIONS BELOW

The opinion of the Board of Tax Appeals for the District of Columbia (R. 4-10) is not reported. The opinion of the United States Court of Appeals for the District of Columbia (R. 19-23) is reported at 119 F. (2d) 451.

JURISDICTION

The judgment of the United States Court of Appeals for the District of Columbia was entered on March 24, 1941. The jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code, as amended by the Act of Feburary 13, 1925.

STATEMENT OF THE CASE

Pursuant to the provisions of the District of Columbia Income Tax Act imposing taxes upon the income of individuals domiciled in the District on the last day of the taxable year the respondent reported his income for the calendar year 1939 and paid the first installment of the tax computed thereon. Simultaneously with such payment, the respondent filed a claim for refund of the amount paid, alleging that he was not domiciled in the District on the tax date. On August 17, 1940, the Assessor, D. C., notified respondent of the disallowance of his claim. On September 16, 1940, the respondent, acting in accordance with the provisions of Section 34 of the District of Columbia Income Tax Act (53 Stat. 1103), Sec. 980gg., Title 20, D. C. Code, 1929, Supplement V, appealed from the action of the Assessor to the Board of Tax Appeals for the District of Columbia.

The respondent is an individual. At the time of the hearing before the Board of Tax Appeals he was a single person residing in an apartment in the District of Columbia furnished and equipped with his own furniture and equipment.

The respondent was born in New London, Connecticut, in 1905. When he was five years old he moved with his parents to Los Angeles, California, where he resided until 1926, when he removed to Berkeley, California. In 1929, the respondent completed his course of studies at Brown University. Immediately thereafter he accepted employment in a trust company in Detroit, Michigan, of which one of his former professors at Brown University was vice-president. The respondent took up his residence in Detroit, living first in a rooming house and later in an apartment. He became a registered voter in Wayne County, Michigan, and still is such, and has ever since voted in the elections and primaries there, the last time being in the Michigan primaries in September, 1940. With the exception of a year's leave of absence from the trust company,

during which he again attended Brown University, the respondent resided and was employed in Detroit from 1929 to 1935. He did not then, and does not now, own any property in the State of Michigan (R. 4, 5).

In January, 1935, the respondent accepted employment in the District of Columbia as an economist in the Treasury Department, and has since continued such employment and resided in the District (R. 5).

With respect to his intention, the respondent expressed a preference for his present employment over that which he had in Detroit, and stated that he hoped to retain the position he now has indefinitely. He testified that if his employment with the Federal Government were terminated, he would return to Detroit unless a more satisfactory position should be offered him elsewhere. He would be more likely to return to Detroit because his business connections and friends are located there. If such friends should remove to another city or state, or if he should receive a more attractive offer to work in some other city or section of the country, he would go there. The idea of returning to Detroit, which was nebulous in the first place, has become attenuated, and whether he would so return depends upon the circumstances (R. 6, 7, 8).

The Board of Tax Appeals found as a fact "that when the petitioner (respondent here) came to reside in Washington upon his acceptance of employment in the Federal Government in 1935, he had an intention to remain and make his home in the District of Columbia for an indefinite period of time; and that such intention has ever since, and still does remain with him; and that if he has any intention to return and make his home in Detroit it is a floating intention." (R. 8).

The Board, however, held that under the decision of the Court of Appeals in *Sweeney* v. *District of Columbia* [1], the respondent was not domiciled in the District of Columbia on December 31, 1939 (R. 9-10).

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[1] 72 App. D. C. 30, 113 F. (2d) 25, cert. den. 310 U.S. 631.

The Court of Appeals sustained the Board's finding that the respondent had an intention to remain and make his home in the District, and affirmed the Board's decision that he was, nevertheless, domiciled without the District.

SPECIFICATION OF ERRORS

The United States Court of Appeals for the District of Columbia erred:

I. In holding that the domicile of an individual employed by the Federal Government is to be determined upon different principles of law than those applicable to the determination of the domicile of an individual engaged in private employment.

II. In holding that an individual who has physically removed to the District of Columbia and has an intention to remain and make his home therein indefinitely nevertheless retains his domicile for all purposes in the state where he formerly resided because of his employment by the Federal Government.

III. In holding that the respondent was not domiciled in the District of Columbia for purposes of taxation on December 31, 1939.

STATUTE INVOLVED

Section 2(a) of the District of Columbia Income Tax Act (53 Stat. 1087), Sec. 980a., Title 20, D. C. Code, 1929, Supplement V, provides as follows:

> "TAX ON INDIVIDUALS.—There is hereby levied for each taxable year upon the taxable income of every individual domiciled in the District of Columbia on the last day of the taxable year a tax at the following rates:"

* * * *

SUMMARY OF ARGUMENT

Conjunction of physical presence and animus manendi in the new location establishes a change of domicile. There is no question concerning the respondent's physical presence in the District of Columbia. The question of intention to remain in the District of Columbia is one of pure fact. The Board of Tax Appeals found as a fact that when the respondent came to the District in 1935 to accept Federal employment, he had an intention to remain and make his home in the District of Columbia for an indefinite period of time. The Court of Appeals sustained the Board's finding. Domicile in the District follows as a matter of law.

The decision of the Court of Appeals is inconsistent with Congressional intent, lacks support of either law or logic, precludes the equitable distribution of the tax burden, and sanctions tax avoidance.

The domicile of an employee of the Federal Government for purposes of taxation should be determined under the same general rules applicable to persons in private employment. Such individuals are under no more compulsion to work or reside in the District of Columbia than persons in private employment. Domicile in the District for purposes of taxation is not inconsistent with the right of Federal employees to vote in their respective states of former residence.

ARGUMENT

I

Respondent was clearly domiciled in the District of Columbia under traditional formula requiring conjunction of physical presence and animus manendi.

In 1935 the respondent came to reside in the District of Columbia. Since that time he has had no home nor dwelling place

except the one which he has continuously maintained in the District. When a person has one home and only one home, his domicile is the place where his home is. *Restatement, Conflict of Laws*, Chapter 2, Section 12, Page 24; *Beale, Conflict of Laws*, Sec. 19.2.

Domicile is defined in 9 *R. C. L.* 538 as follows:

> "The term 'domicile' in its ordinary acceptation means a place where a person lives or has his home. In a strict legal sense that is properly the domicile of a person where he has his true, fixed, permanent home and principal establishment, and to which place he has, whenever he is absent, the intention of returning. In a sense domicile is synonymous with home, or residence, or 'the house of usual abode'."

See also:

Texas v. *Florida*, 306 U.S. 398;
Beale, Conflict of Laws, Sec. 9.5;
Jacobs, Law of Domicile, Section 70, Page 113, and Section 72, Page 120;
Kennan on Residence and Domicile, Section 16, Page 37;
Goodrich on Conflict of Laws, Section 25.

Where a person lives is taken *prima facie* to be his domicile, and the burden of disproving such domicile is on the person who denies it.

Anderson v. *Watt*, 138 U.S. 694;
Ennis v. *Smith*, 14 How. 400, 423;
Newman v. *United States ex rel. Frizzell*, 43 App. D. C. 53;
Bradstreet v. *Bradstreet*, 18 D. C. Rep. (7 Mackey) 229;
Gallagher v. *Gallagher* (Tex. Civ. App.), 214 S.W. 516;
Dodd v. *Dodd* (Tex. Civ. App.), 15 S.W. (2d) 686;
Harrison v. *Harrison*, 117 Md. 607, 84 A. 57;
9 *R. C. L.* 541, 557;

Restatement, Conflict of Laws, Chap. 2, Sec. 12, Page 24;
Story, Conflict of Laws (8th Ed., 1883), Sec. 46;
Kennan on Residence and Domicile, Section 172, Page 327;
Dicey, Law of Domicile, Page 9.

The Board of Tax Appeals found as a fact that when the respondent came to the District in 1935 to accept Federal employment, he had an intention to remain and make his home in the District of Columbia for an indefinite period of time (R. 9). The Board's findings were accepted by the Court of Appeals (R. 22-23) and domicile in the District of Columbia follows as a matter of law.

In *Story, Conflict of Laws* (8th Ed., 1883), Section 46, the rule is stated as follows:

> "If a person has actually removed to another place with an intention of remaining there for an indefinite time, and as a place of fixed present domicile, it is deemed to be his place of domicile, notwithstanding he may entertain a floating intention to return at some furture period."

The rule announced by Story seems to have been almost universally adopted.

Gilbert v. *David*, 235 U.S. 561;
Mitchell v. *United States*, 21 Wall. 350, 22 L. Ed. 584;
Rosenberg v. *Comm. of Internal Revenue*, 59 App. D.C. 178, 37 F. (2d) 808;
Newman v. *United States ex rel. Frizzel, supra;*
Bradstreet v. *Bradstreet, supra;*
Ringgold v. *Barley*, 5 Md. 186, 59 Am. Dec. 107;
Klutts v. *Jones*, 21 N. Mex. 720, 158 P. 490, L.R.A. 1917A 291;
Felker v. *Henderson*, 102 A. (N.H.) 623, L.R.A. 1918E 512;
Beale, Conflict of Laws, Sec. 19.1;
Kennan on Residence and Domicile, Section 127, Page 257.

The intention to return to the domicile of nativity, or one acquired, must be fixed, absolute, and unconditional. A mere floating intention to return at some future period or upon the happening of some uncertain event is not sufficient. The intent to return must not depend upon inclination or be controlled by future events.

Sparks v. *Sparks*, 114 Tenn. 666, 88 S.W. 173, 174;
Story, Conflict of Laws (8th Ed., 1883), Section 46;
Cf. Beale, Conflict of Laws, Section 18.1.

The Court of Appeals, in the case of *James J. Sweeney* v. *District of Columbia, supra*, apparently affirmed the rule that conjunction of physical presence and *animus manendi* establishes a change of domicile to the new location. However, in the instant case where there was both physical presence and intention to remain in the District, the Court of Appeals held the respondent to be domiciled in Michigan even though his intention, if any, to return there is a mere floating intention. The only evidence supporting even a "floating" intention to return to Michigan was respondent's statements at the hearing to the effect that if he should become disemployed he would most likely seek employment in Detroit, Michigan, for the reason that his business contacts are presently located at that place. It seems evident that respondent did not intend to retain his domicile in Michigan.

The intention required for the acquisition of a domicile of choice is an intention to make a home in fact, and not an intention to acquire a domicile. *Restatement, Conflict of Laws*, Chapter 2, Section 19, Page 38. See also: *Mitchell* v. *United States, supra; Texas* v. *Florida, supra; Feehan* v. *Trefry*, 237 Mass. 169, 129 N.E. 292; *Beale, Conflict of Laws*, Sec. 19.2. The nature of the intention required for the acquisition of a domicile of choice is clearly pointed out by Mr. Justice Holmes in the case of *Dickinson* v. *Inhabitants of Brookline*, 181 Mass. 195, 63 N.E. 331, as follows:

"Of course the argument for the plaintiff is that his domicile is presumed to continue until it is proved to have been changed, that it could be changed only by his intent and overt act, and that he expressly denied the intent. The ambiguity is in the last proposition. The plaintiff did not deny that he intended to keep on living as he had lived for the last few years and if the jury saw fit to find, as no doubt they did, that he did intend to do so, then he did intend the facts necessary to constitute a change in domicile, and what he did not intend was simply that those facts should have their inevitable legal consequence."

See also:

Beale, Conflict of Laws, Sec. 19.2;
Jacobs, Law of Domicile, Section 148, Pages 213-215.

Respondent also testified that he is a registered voter of Wayne County, Michigan. While exercise of the elective franchise is important to be considered, as a general rule it is not conclusive, and when overbalanced by other circumstances, the fact of voting may be of slight importance. 19 *C. J.* 436, 437.

See also:

Gaddie v. *Mann*, 147 F. 955;
Bradstreet v. *Bradstreet, supra;*
In re Sedgwick, 223 F. 655;
In re Trowbridge's Estate, 266 N.Y. 283, 194 N.E. 756;
Feehan v. *Trefry, supra;*
Dickinson v. *Inhabitants of Brookline, supra;*
Wagner v. *Scurlock*, 166 Md. 284, 170 A. 539, 542;
Kennan on Residence and Domicile, Section 78, Pages 158-161;
Wharton, Conflict of Laws, Section 63.

In considering the question of the domicile of one who has removed from one state to another, the fact that the right of suffrage has been exercised in the former state is entitled to much greater weight than when considering the domicile of one who has removed from a state to the District of Columbia. Ordinarily one wishes to take part in the political activities of the state in which he intends to live and therefore when one continues to vote in the state of his former residence this may create a presumption of a fixed intention to return to that state. But the right of suffrage is denied residents of the District. It is but natural that one who removes from a state to the District with the intention of remaining here permanently should, nevertheless, endeavor to retain his right of suffrage as long as possible. It may be that, under the law of Michigan, a former resident of that state may continue to exercise a right of suffrage there until he has actually voted elsewhere. That question, however, is not before this Court. But in any event, it is plain that the State of Michigan cannot accord a domicile in that State to a resident of the District of Columbia merely by permitting him to vote in its elections.

Unless the domicile of an individual employed by the Federal Government is to be determined upon principles of law different from those used in determining the domicile of an individual in private employment, it clearly appears that the argument that respondent was domiciled in the District of Columbia on the date in question is supported by substantially all authority, including opinions of this Court. The opinion of the Court of Appeals, however, departs from the traditional formula for determining domicile in two respects: First, by placing Government employees in a special class and holding that the domicile, for purposes of taxation, of an individual so employed is to be determined upon different principles of law than those applicable to the determination of the domicile of other individuals, and, second, by holding that a Government employee maintaining his only home in the

District and having an intention to remain and make his home here indefinitely is, nevertheless, domiciled for all purposes in the state where he formerly resided.

II

The domicile of an employee of the Federal Government for purposes of taxation should be determined under the same general rules applicable to persons in private employment.

The question here presented was first considered by the Court of Appeals in the case of *James J. Sweeney* v. *District of Columbia.*[2] Sweeney had paid intangible personal property taxes assessed against him by the District of Columbia for the fiscal years 1938 and 1939 and appealed from such assessments to the Board of Tax Appeals for the District of Columbia urging invalidity of the assessments for the reason that he was not domiciled in the District of Columbia on the tax dates. Sweeney, an employee of the Federal Government, had maintained his only home in the District of Columbia for more than 20 years, during which time he had paid poll taxes and voted regularly in the elections of Massachusetts, claiming as his "legal residence" the address of an apartment house where his mother had formerly lived but at which address neither he nor any member of his family had resided for some time prior to the dates involved. The Board of Tax Appeals found as a fact that at the time Sweeney came to the District of Columbia in 1919 and up to and including July 1, 1938, the last tax day involved, he had an intention to remain in the District of Columbia indefinitely and make the District his home for an indefinite period of time and that if he had any intention to remove from the District it was a floating or conditional intention to be in the future realized, if at all, upon his retirement from Government service, if that should occur

[2] 72 App. D.C. 30, 113 F. (2d) 25, cert. den. 310 U.S. 631.

before his death, or upon the happening of some other contingency. The Board then found as a matter of law that Sweeney was domiciled in the District of Columbia on the tax dates in question [3].

In reversing the Board's decision in the *Sweeney* case, the Court of Appeals affirmed the traditional formula which holds that conjunction of physical presence and *animus manendi* in the new location brings about a domiciliary change [4]. The Court did not hold this formula to be inapplicable to persons in Government service but said that in the case of such individuals residing in the District there is a presumption of continuity of state domiciliation (or privilege of retaining state domiciliation), which presumption could be overcome by strong evidence. The Court held that [5] "one who comes to the District and remains to render service to the Government which requires his presence here, may retain his domicile in the State from which he comes until the service terminates unless he give clear evidence of his intention to forego his State allegiance." The effect of the Court's decision in the *Sweeney* case seems to be that there was insufficient evidence to support the Board's finding of intention.

In the instant case the Board of Tax Appeals found as a fact that when the respondent "came to the District in 1935 to accept Federal employment he had an intention to reside and make his home in the District of Columbia for an indefinite period of time" (R. 9). The Board, however, held that it was required by the Court's decision in the *Sweeney* case to hold that respondent was not domiciled in the District of Columbia on the tax date here involved. In this case the Court of Appeals affirmed the Board's findings of fact, including the finding of intention to remain in the District. In affirming the Board's decision, the Court relied on its decision in the

[3] 68 W.L.R. 10; Prentice-Hall State and Local Tax Service, Vol. 1, Sec. 94,030.

[4] 113 F. (2d) 25, 28.

[5] 113 F. (2d) 25, 32.

Sweeney case (R. 20). The Court of Appeals, however, in this case and the companion case of *District of Columbia* v. *Paul M. DeHart* [6], abandons all presumptions and formulae in determining the domicile of a Government employee residing in the District of Columbia and holds that the domicile of such an individual for all purposes is to be determined solely by his own statements without regard for the facts in individual cases. This rule appears to be independent of legal precedent and unsupported by reason.

Individuals are under no compulsion to accept Federal employment or reside in the District of Columbia.

Exceptions to the traditional formula that conjunction of physical presence and *animus manendi* in the new location brings about a domiciliary change have been generally recognized in the case of persons under physical or legal compulsion, such as soldiers, sailors, and inmates of jails, and persons without the capacity to acquire a domicile of choice, such as infants, lunatics and married women. Exceptions in such cases are based on the inability of the individuals involved to exercise any power of choice in the matter [7]. Normally, individuals accepting employment with the Federal Government are under no more compulsion than individuals accepting private employment in the District of Columbia. Employees of transportation, communication, and various other corporations operating throughout the nation are subject to transfer just as are Government employees, and the compulsion to work in the District of Columbia or elsewhere is equally strong in either case.

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[6] 119 F. (2d) 449.

[7] See:
Gallagher v. *Gallagher* (1919; Tex. Civ. App.), 214 S.W. 516;
Kissel v. *Pickens* (1938; D. C.), 25 F. Supp. 455;
Harris v. *Harris*, 205 Iowa 108, 215 N.W. 661;
19 C. J. 416, et seq.

Furthermore, neither the Government employee nor the person in private employment is compelled to reside within the District of Columbia. Residential presence in the District is no more required in the case of persons performing Federal duty than in the case of individuals practicing professions, trades, or engaging in industrial or other business activities in the District.

The Court of Appeals' ruling does not purport to have application to all persons in the District but is limited to employees of the Federal Government. Apparently, the Court does not intend that its ruling should have application to all employees of the Federal Government, but should be limited to such employees residing in the District of Columbia. There would appear to be no logical argument supporting a special rule regarding employees of the Federal Government which applies to only a limited number of such individuals. Any special rule for determining the domicile of Federal employees should apply to all such employees alike. Certainly it is not reasonable that the thousands of Federal employees residing in nearby Virginia and Maryland must have their domiciles determined on a different basis than those Federal employees residing in the District.

Government employees residing in the District of Columbia are not taxable in their respective states of former residence upon income earned in the District.

In its opinion in the *Sweeney* case the Court of Appeals takes the view that its holding that Government employees are not domiciled in the District of Columbia subjects such individuals to taxation in the respective states where they formerly resided, and that such individuals are not, therefore, legally or morally, placed in a preferred position and that no unjust discrimination between such individuals and non-Government employees results. This view is stated by the Court

without reference to the various state taxing statutes and apparently without consideration of the basic theory of taxation.

Thirty-four states tax individual income. The laws of three of such states tax only the income from certain intangibles and are clearly applicable only to individuals actually residing within the respective states [8]. In the thirty-one states imposing taxes upon the net income of individuals, such taxes apply to "residents", persons "residing within", or "inhabitants" of the respective states. In substantially all cases, these terms are defined, either by law or regulation, to include individuals domiciled within the respective states. In four of such states, the term "domiciled" is specifically limited to persons actually residing within such states [9]. The laws and

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[8] Ohio imposes a tax upon intangibles which, in the case of income-producing investments, is measured upon the annual yield therefrom. Only persons having an actual place of abode in the State for a period of more than six months of the tax year are liable for the tax. See Ohio Corporation Tax Service, Par. 20-708.

Tennessee has a special income tax on interest and dividends, imposed upon individuals "in" Tennessee. Domicile, for purposes of liability to the tax, is construed by the administrative officials and courts to mean "actual residence" in the State. See Tennessee Corporation Tax Service, Par. 15-101 and citations thereunder.

Laws of New Hampshire impose taxes upon the income from certain intangibles of individuals who are inhabitants or residents of the State on January 1 in any year and on individuals who ceased to be residents of the State during the preceding calendar year on such part of the year as they were residents of the State. See New Hampshire Corporation Tax Service, Par. 9175-2.

[9] The California income tax law provides that: "Every natural person who is in the State of California for more than a temporary or transitory purpose is a resident and every natural person domiciled within this State is resident unless he is a resident within the meaning of that term as herein defined of some other State, Territory or country." Article 2(k)-1 of the California regulations provides that: "Under this definition, an individual may be a resident although not domiciled in this State, and, conversely, may be domiciled in this State without being a resident. The purpose of this definition is to include in the category of individuals who are taxable upon their entire net income, regardless of whether derived from sources within or without the State, all individuals who are physically present in this State enjoying the benefit and protection of its laws, and government, except individuals who

regulations of three additional states apparently limit the imposition of the tax to individuals actually residing within such states [10]. The courts of Massachusetts apparently consider that domicile for purposes of taxation means actual residence, or "home for the general purposes of life" [11]. Examination of the laws and regulations of the remaining twenty-three states discloses that in only one instance do such laws or regulations indicate an intention to extend the tax to individuals (either Government employees or others) having their

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are here temporarily, and to exclude from this category all individuals who, although domiciled in this State, are physically present in some other state or country for other than temporary or transitory purposes, and, hence, do not obtain the benefits accorded by the laws and government of this State." See California Corporation Tax Service, Par. 15-047.

Article 15-1 of regulations issued by the State Tax Commission of Idaho provides "Residence is defined as an act or fact of abiding or dwelling in a place for some time. Residence is not domicile." See Idaho Corporation Tax Service, Par. 1494f. H.B. 294, Laws of 1941, amends Sec. 61-2412 of the Idaho Code by adding Paragraph (7), which excludes the income of resident persons derived from salaries, wages or compensation for personal service, or from the conducting and carrying on of their professions, vocations, trades, or businesses, when derived from sources outside of the State of Idaho (effective March 7, 1941). See Idaho Corporation Tax Service, Par. 10295h.

Article 105 of regulations pertaining to the Wisconsin income tax law contains language identical to that above quoted from the Idaho regulations. Decisions cited following paragraph 10-110 of the Wisconsin Corporation Tax Service clearly show that Wisconsin courts consider individuals taxable only to the extent that they actually reside within the State during the taxable year.

Paragraph 7 of Section 350 of the personal income tax law of the State of New York provides that "The word 'resident' applies only to natural persons and includes any person domiciled in the state, except a person who, though domiciled in the state, maintains no permanent place of abode within the state, but does maintain a permanent place of abode without the state, and who spends in the aggregate not to exceed thirty days of the taxable year within the state." See New York Corporation Tax Service, Par. 15-014.

[10] See:
New Mexico Corporation Tax Service, Paragraph 1016-1.
Colorado Corporation Tax Service, Paragraph 10-003.
Delaware Corporation Tax Service, Paragraph 90-801.

[11] See:
Pickering v. *City of Cambridge*, 144 Mass. 244, 10 N.E. 827;
Feehan v. *Tracy*, 237 Mass. 169, 129 N.E. 292.

homes and actually residing and earning their incomes without the state [12].

Any attempt to impose taxes upon income earned without the taxing jurisdiction by individuals residing without the jurisdiction and receiving no benefits or protection therefrom violates the fundamental principles of taxation. And in the vast majority of cases, such attempts can operate only upon volunteers [13]. In few cases does the state have jurisdiction over either the individual or any of his property and even if such a tax were valid, successful enforcement would be impossible.

It therefore seems obvious that the rule laid down by the Court of Appeals is inconsistent with the tax laws of most of the states, and leads to confusion, tax avoidance, and discrimination.

Domicile in the District of Columbia is not inconsistent with political status in one of the states.

The Court of Appeals has not only failed to recognize a distinction between domicile or *civil* status and *political* status but has held that the latter determines the former. In other words, the Court has said that the personal rights of an individual in Government employment, i.e., the law which determines his majority or minority, his marriage, succession, testacy or intestacy, and the like, depends not upon the place

[12] The Kentucky regulations attempt to tax the income of individuals in Government service without the State who claim domicile therein. See Kentucky Corporation Tax Service, Paragraph 10-016.

[13] In a letter dated December 10, 1940, the State Tax Commission of West Virginia states that no ruling has been promulgated with respect to liability of Federal employees residing in Washington to file income tax returns in the State of West Virginia although some such individuals have been advised that so long as they consider West Virginia as the place of their legal residence and domicile they should file returns with the State. See West Virginia Corporation Tax Service, Paragraph 10-055. In other words, the Commission declines to discourage willing contributors.

where he lives and has his home but upon the place where he formerly resided and acquired the right to vote. Whether an individual who has abandoned his residence in a state and accepted Federal employment and established residence in the District of Columbia may continue to retain a political status in the state where he formerly resided is a matter to be determined by the laws of such state. The laws of most states allow persons in Government service to continue to vote in the elections of such states. Since an individual has no political status in the District of Columbia it is proper and desirable that he be allowed to retain his citizenship or *political* status in the state of his former residence. This privilege is generally granted to all persons in Government service whether residing in the District of Columbia or not [14]. There is, however, no corresponding reason why an individual residing permanently or at least indefinitely, in the District of Columbia should have a *civil* status or domicile for all purposes in a state where he may never again reside, and it does not appear that the state laws generally accord such a status or domicile to individuals who have been absent therefrom for long periods in Government service [15]. And the fact that such individuals retain their *political* status and continue to vote in their respective states of former residence is not inconsistent with the fact that they acquire a *civil* status or domicile in the District of Columbia where they live, enjoy the benefits and protection of local government, by the laws of which District their per-

[14] *Campbell* v. *Ramsey* (Kans., 1939), 92 P. (2d) 819.

[15] In *Sparks* v. *Sparks*, 114 Tenn. 666, 88 S.W. 173, one who took his family to Washington and lived there 22 years was held to have lost his citizenship, residence and domicile in Tennessee although he occasionally returned to the state and had voted and paid taxes there and had repeatedly expressed the intention of returning to that state in case he should lose his position.

sonal rights should be determined and in which place they are legally domiciled [16].

Most Government employees remain in the District of Columbia after retirement.

At the hearing before the Board of Tax Appeals in the companion case of *District of Columbia* v. *Paul M. DeHart* [17], there was introduced in evidence, by stipulation, a statement, taken from a Report by the Statistical Division, United States Civil Service Commission, on Employment and Payrolls in the Executive Branch of the United States Government, published July 8, 1940, showing that on May 1, 1939, 13.59% of all persons employed in the Executive Branch of the Federal Government were so employed within the District of Colum-

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[16] There is a clear distinction between citizenship on the one hand, and residence or domicile on the other. *Keenan on Residence and Domicile*, Section 62, Pages 136-137, citing among others the case of *Brown* v. *United States*, 5 C. Cls. 571, 579, wherein the Court stated: "We cannot accept the doctrine that the matter of domicile affects the fact of citizenship nor that a mere foreign residence, of itself, can work a forfeiture of political rights."

"Both residence and domicile have to do with a certain set of relations between a person and a place, while citizenship is based upon one's political status which is quite a different thing." *Keenan on Residence and Domicile*, Section 61, Page 135.

"Allegiance and domicile are entirely distinct things. They may exist apart; they may exist together; but the one does not necessarily involve the other." *Jacobs, Law of Domicile*, Section 144, Pages 208, 209.

The distinction is clearly drawn in *Shaeffer* v. *Gilbert*, 73 Md. 66, 20 A. 434, where it is said:

> "But there is, it seems to us, a broad distinction between domicile, in a legal and technical sense, by which one's civil status and the rights of persons and property are determined, and residence required by the Constitution as a qualification for the exercise of political rights. 'Domicile', in a legal sense, has, as we all know, a fixed and definite meaning; and yet the word 'domicile' is nowhere to be found in the Constitution. * * * The framers of the Constitution were dealing with the question of residence for political purposes, which, although analogous in many respects, is not to be understood in the same sense as domicile in law, by which the rights of persons and property are governed."

[17] 119 F. (2d) 449.

bia. This figure includes persons residing without the District, principally in nearby Maryland and Virginia. There also was included in the stipulation a statement, taken from the Retirement Report for the Fiscal Year Ended June 30, 1939, prepared by the Retirement Division, United States Civil Service Commission, showing that on May 1, 1939, 11.75% of all persons receiving annuities under the Civil Service Retirement Act were residing within the District of Columbia. The number or percentage of active Federal employees residing in the District is not available, but if it is assumed that 16.5% of Federal employees working in the District reside without its boundaries, then the percentage of active Federal employees residing in the District is the same as the percentage of retired Federal employees residing in the District. These official figures strongly support the view that substantially all Federal employees continue to reside in the District after retirement from Government service.

III

Respondent was domiciled in the District of Columbia for purposes of taxation on December 31, 1939.

Intention of Congress

The District of Columbia Income Tax Act was enacted as Title II of the District of Columbia Revenue Act of 1939. The bill, as originally introduced and passed by the House of Representatives, provided for a tax upon both residents and nonresidents.[18] The bill was amended on the floor of the House so as to exempt from the income tax "Senators, Representatives, Delegates, Resident Commissioners, officers and employees of the Senate and House of Representatives of the United States".[19] This exemption provision was unaccept-

[18] See H. R. 6577, 76th Congress, First Session.

[19] 84 Congressional Record 9892-9893.

able to the Senate and it was agreed in conference that the tax should be levied upon "every individual domiciled in the District of Columbia on the last day of the taxable year". In reporting the action of the conferees to the Senate, Senator Overton, chairman of the Senate conferees, called attention to the fact that the individual income tax is imposed only on those domiciled in the District, and stated:

> "* * * It, therefore, necessarily excludes from its imposition all Senators and Members of the House of Representatives, the President of the United States, all Cabinet officers, and all Federal employees who have been brought into the District from the various States of the Union to serve their country in the National Capital, provided such employees have not of their volition surrendered their domiciles in the States and have voluntarily acquired domiciles within the District of Columbia." [20]

Mr. Nichols, the chairman of the House conferees on the bill, was absent from the conference and the conference report and explanation of the bill to the House of Representatives was made by Mr. Dirksen, a member of the Fiscal Affairs Subcommittee of the House District Committee and one of the conferees. In the course of such report, the following discussion occurred on the floor of the House (84 Cong. Rec., July 12, 1939, 12527, 12528, 12529):

> "MR. DIRKSEN. * * *
>
> The very explosive and controversial item relative to the applicability of the tax was finally resolved when we wrote a provision in the conference bill to the effect that it applies only to those who are legally domiciled in the District of Columbia on the last day of the taxable year. This takes out Members of

[20] See 84 Congressional Record, July 11, 1939, 12347

Congress, it takes out Senators, and it takes out the employees who come and go from Washington, making the tax applicable only to those who are domiciled in the District of Columbia on the last day of the taxable year. I believe this meets the great objection that was made to this bill in the first instance.

* * * *

"MR. MCCORMACK. Will the gentleman state what his understanding or intent or what the intent of the conference committee or the Congress is in that respect, taking the case, for instance, of an employee of the Federal Government, a civil-service employee, in the Department of Agriculture or any other department, for instance, who is employed steadily year after year. Could he register as his legal place of residence Massachusetts or Illinois on the last day of the calendar year, exercising an election in the matter?

"MR. DIRKSEN. My interpretation of the matter is that their right to vote back home is preserved under this bill by complying with tax requirements, by way of poll tax and otherwise; but if they are actually domiciled here, which means that they have a legal domicile here, they will be taxable in the District of Columbia.

"MR. MCCORMACK. Does the gentleman realize the situation in which that places such an employee unless he gives up his right of suffrage or the exercise of his right of suffrage? He would have to pay an income tax in his own State, he would have to pay an income tax here, and he would have to pay an income tax to the Federal Government.

"MR. DIRKSEN. I do not so understand it. I think one can have a taxable domicile in the District of Columbia and still preserve his voting rights back home.

"MR. MCCORMACK. If you have a residence for voting purposes, you have a domicile in the State in which you are voting, have you not?

"MR. DIRKSEN. I do not believe so.

"MR. MCCORMACK. The gentleman, I am sure, does not want to put any employee of the Federal Government in a different position from that in which he places a Member of Congress.

"MR. DIRKSEN. That is quite true.

"MR. MCCORMACK. I agree that a Member of Congress should not pay an income tax to the State, to the District, and to the Federal Government. The newspapers, unfortunately, and I assume in many cases unintentionally, have misstated the situation. However, the same thing applies, in my opinion, to the employees of the Federal Government; and if their legal domicile is in the District of Columbia, they are subject to the income tax. If they register in their home State, then, in my opinion, they are also subject to the income tax of the State and they are also subject to the income tax of the Federal Government.

"MR. DIRKSEN. I may say that is not my interpretation of it and neither is that the interpretation of the tax experts who worked with the committee on this subject.

"MR. MCCORMACK. I think this is a point that should be cleared up. Suppose a person comes from Boston, and the same thing applies to any other city in the country or any other State like Massachusetts, and his yearly employment is in the District of Columbia. He is living here all the year, but he registers

for voting purposes in Massachusetts. He cannot vote here and we all know the reasons why, but he wants to exercise his right of suffrage and if he registers in Massachusetts, does he still have to pay the income tax here.

"MR. DIRKSEN. That precise question was raised in the course of the conference. (Here the gavel fell.)

"MR. NICHOLS. Mr. Speaker, I yield the gentleman 5 additional minutes.

"MR. DIRKSEN. I will say to the gentleman from Massachusetts that I raised that precise question in the course of the conference. We had it up at considerable length with all the tax advisers to this committee, as well as the conference committee, and we were of the opinion you could be taxed here, and yet you can vote back home because you have a taxable domicile in the District. It does not interfere with your right, if you pay your poll tax in Massachusetts, to vote back there and still pay your income tax here. The situation the gentleman alludes to might very conceivably arise in connection with the case of a family that has lived here for 20 or 30 years. They continue to vote back there, but is there any reason why it should not be held that they have a taxable domicile in the District of Columbia since this is the place where they live?

"MR. MCCORMACK. I understand that, and I do not want to prolong my inquiry, although I consider it very important.

"MR. DIRKSEN. It is important.

"MR. MCCORMACK. I think the conference committee has decidedly improved the bill over its condition as it passed the House and the Senate, but does

the gentleman not think that the District of Columbia is peculiar? It is entirely different from any other political subdivision; it is entirely different from any other city in the country. People come here from all over the country, most of them employed by the Federal Government, and most of them thinking of home. They may stay here 20 or 25 years, thinking of retirement, and thinking finally of getting back home to Michigan or California or Texas or whatever the State may be from which they came.

"If they are going to be subject to the State income tax and the District income tax and the Federal income tax, then we are subjecting them to three income taxes, and in order to avoid that they have only one thing to do and that is not to register for the purpose of voting, and if we compel them to do that, then we are compelling them to involuntarily give up the exercise of their suffrage. Whether or not they are to be taxed in the States is something that we cannot determine. That will be determined in accordance with State law not by anything that we pass, or anything that the Commissioners of the District of Columbia may say.

"MR. DIRKSEN. All we can determine is that in every State there is a credit device whereby the charge that there may be triple taxation is avoided.

"MR. BATES of Massachusetts. Mr. Speaker, will the gentleman yield?

"MR. DIRKSEN. Yes.

"MR. BATES of Massachusetts. That particular point that my colleague from Massachusetts raises was made very pointedly in the committee of conference by both the gentleman from Illinois and my-

self. We raised that particular point because we are much concerned about how those who come from our States would be affected by the income-tax provisions of the new law, and it was distinctly understood that in this bill there should be no triple taxation, and I well recall Senator Tydings raising the point also.

* * * *

"MR. NICHOLS. Mr. Speaker will the gentleman permit me to read the legal definition of the word 'domicile'?

"MR. DIRKSEN. I yield to the gentleman from Oklahoma.

"MR. NICHOLS. Since the question of the effect of the word 'domicile' in this act has been raised, I think the House would probably like to have the legal definition read:

> "Domicile is the place where one has his true, fixed, permanent home and principal establishment and to which, whenever he is absent, he has the intention of returning, and where he exercises his political rights. * * * There must exist in combination the fact of residence and animus manendi—

which means residence and his intention to return; so that under this definition he could certainly live in the District of Columbia and have his legal domicile in any other State in the United States."

In support of its view, expressed in the companion case o *District of Columbia* v. *Paul M. DeHart*, *supra*, that the legis lative history of the Act here involved "clearly reveals" Con gressional intent consistent with the rule laid down in th and the *Sweeney* case, the Court of Appeals relies on th

above-mentioned statements of Senator Overton, Mr. Nichols, and Mr. Bates. It is respectfully submitted that this conclusion of the Court of Appeals, based upon selected portions of the legislative history, is erroneous and that an examination of the entire legislative history of the Act reveals Congressional intent consistent with the views taken by the petitioners herein. This view is supported by the following considerations:

(a) The language in dispute was inserted in the bill by the conferees. Thus, the interpretation of the conferees is of primary importance in determining Congressional intent. The above-quoted remarks of Mr. Dirksen clearly set forth the interpretation which the conferees intended to have placed upon the language in question. The views of the conferees, having been explained and discussed on the floor, apparently were accepted by the members of the House of Representatives.

(b) The statement by Mr Bates, one of the conferees, merely confirmed the fact that the questions in issue had been raised in the Committee of Conference, and affirmed Mr. Dirksen's statement that the credit device available in each state should be used to avoid any possibility of "triple taxation".

(c) Mr. Nichols, although chairman of the House conferees, was not present at the conference on the bill and, therefore, was not in position to express the views of the conferees. The definition of the word "domicile" which he read from the floor presumably has the sanction of its unidentified author but was neither subscribed to by any of the conferees nor adopted by the House.

(d) Likewise, Senator Overton did not suggest that his interpretation of the term "domiciled" represented the views of the conferees. The conference report was accepted by the Senate without debate and, in view of the clear statements during the course of the debate in the House regarding the opinion of the conferees, it would appear that Senator Over-

ton's statements regarding the construction to be placed upon the term "domiciled" are merely expressions of personal opinion and do not represent the views of any of the other conferees.

The only reasonable interpretation of the word "domiciled" is that urged by the petitioner.

In construing the language here in question, practical considerations applicable to taxation should prevail.[21] The interpretation adopted by the Court of Appeals in the instant case and the companion case of *District of Columbia* v. *Paul M. DeHart*, *supra*, is not only unreasonable and impractical but is inconsistent with that Court's decision in the *Sweeney* case. The *Sweeney* decision apparently attempts to adhere to the traditional legal formula for determining domicile and the evidence clearly shows that respondent here was domiciled in the District of Columbia on December 31, 1939, under the test laid down in the *Sweeney* case. In the instant case, however, the Court of Appeals abandons all legal formulae and holds that Government employees residing either permanently or indefinitely in the District of Columbia may elect to be domiciled in either the District or the states wherein they formerly resided, and, likewise, may elect to contribute to the support of either or neither of such governments.

Respondent came to the District voluntarily to accept employment with the Federal Government and has remained here through preference for more than five years, and intends to remain here and make the District permanently his home. Although he may elect to retain his citizenship and vote in the State of Michigan it is only reasonable and sensible that he should be domiciled in the District of Columbia for purposes of taxation and be thereby required to contribute proportion-

[21] Cf. *Helvering* v. *Hallock*, 309 U.S. 106; *Farmers' Loan & Trust Co.* v. *Minnesota*, 280 U.S. 204.

ately to the support of the government which affords him protection. [22]

CONCLUSION

For the reasons above stated, it is respectfully submitted that respondent was domiciled in the District of Columbia for purposes of taxation on December 31, 1939, and that the decision of the Court of Appeals should be reversed.

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[22] Cf. *New York Ex Rel. Cohn v. Graves*, 300 U. S. 308.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1940.

No. 901.

DISTRICT OF COLUMBIA, *Petitioner*,

v.

LENRY C. MURPHY, *Respondent*.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia.

BRIEF FOR RESPONDENT IN OPPOSITION.

HARRY RAYMOND TURKEL,
Attorney for Respondent.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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CONSTITUTION AND STATUTES INVOLVED.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1940.

No. 991.

DISTRICT OF COLUMBIA, *Petitioner*,

v.

HENRY C. MURPHY, *Respondent*.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia.

BRIEF FOR RESPONDENT IN OPPOSITION.

Opinions Below.

The opinion of the Board of Tax Appeals for the District of Columbia (R. 11) is not reported. The opinion of the United States Court of Appeals for the District of Columbia (R. 19-23) is not yet reported.

Jurisdiction.

The judgment of the United States Court of Appeals for the District of Columbia was entered on March 24, 1941 (R. 23). The petition for a writ of certiorari was filed

April 25, 1941. The jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code, as amended by the Act of February 13, 1925.

Question Presented.

Whether certiorari shall be granted to review a decision of the United States Court of Appeals for the District of Columbia, wherein the sole question presented was whether the respondent, an employee of the Federal Government, was domiciled in the District of Columbia on December 31, 1939, within the meaning of Section 2(a) of the District of Columbia Income Tax Act (Sec. 980(a), Title 20 D. C. Code, 1929, Supplement V).

Statute Involved.

Sec. 2(a) of the District of Columbia Income Tax Act (Sec. 980(a), Title 20, D. C. Code, 1929, Supplement V) provides as follows:

> "TAX ON INDIVIDUALS.—There is hereby levied for each taxable year upon the taxable income of every individual domiciled in the District of Columbia on the last day of the taxable year a tax at the following rates:"

SUMMARY OF ARGUMENT.

I.

The present case involves a statute limited in application and is not important:

(a) This Court does not ordinarily review cases arising under statutes limited to the District of Columbia.

(b) This Court has recently denied certiorari in a case presenting identical issues.

(c) The facts of this case are not typical of a great number of Federal employees in the District of Columbia.

II.

The decision of the Court below is correct on its merits:

(a) The legislative history shows that Congress did not intend the statute to apply to Federal employees in the District of Columbia who have not abandoned State domiciliation.

(b) Respondent was not domiciled in the District of Columbia on December 31, 1939.

(c) The decision of the Court below is founded upon correct principles of law.

(d) The decision of the Court below operates equitably.

ARGUMENT.

I.

The present case involves a statute limited in application and is not important.

(a)

The statute involved is confined in its operation to the District of Columbia. Cases arising under such a statute are not ordinarily reviewed by this Court.

Del Vecchio v. *Bowers*, (1935) 296 U. S. 280, 285.

(b)

This Court has recently denied certiorari in a case involving the same petitioner presenting identical issues.

On May 20, 1940, this Court denied a petition for a writ of certiorari filed by the District of Columbia, wherein issues relating to the domicile of Federal employees in the District of Columbia were raised which were identical with those raised here.

Sweeney v. *District of Columbia*, ... App. D. C. ... 113 F. (2d) 25, *certiorari denied*, 310 U. S. 631.

(c)

The facts of this case are not typical of a great number of Federal employees in the District of Columbia.

The respondent is a citizen of Michigan and domiciled in that State. Michigan has no income tax, whereas all but a few States have income tax systems and Federal employees from those States are subjected to State income taxation. It follows that the facts in this case are not typical of a great number of Federal employees in the District of Columbia.

II.

The decision of the Court below is correct on its merits:

(a)

The legislative history of the statute in question indicates clearly that Congress did not intend that the statute should apply to Federal employees in the District of Columbia provided such employees have not voluntarily surrendered their State domiciles and voluntarily acquired domiciles in the District of Columbia.

The bill which was originally introduced in the House established the following basis of taxation:

> "(b) the tax to be imposed on all residents of the District of Columbia regardless of source of income." (Report of the House Conferees, Cong. Record, July

12, 1939. Vol. 84, Part 8, 76th Cong. 1st Session, p. 8971.)

The bill was amended while still in the House to exempt members of Congress and their immediate staffs.

A basis of taxation which would render liable all residents except members of Congress and their staffs was unacceptable to the Senate, and in conference agreement was reached upon the principle of taxing only those domiciled in the District of Columbia.

Since the change of the basis of taxation from residence to domicile originated in the Senate, it is important to set forth the explanatory statement of Senator Overton, who was Chairman of the Managers on the part of the Senate and in charge of its passage:

> "Mr. President, I now call attention to the fact that the individual income tax is imposed only on those domiciled in the District of Columbia. It, therefore, necessarily excludes from its imposition all Senators and Members of the House of Representatives, the President of the United States, all Cabinet officers, and *Federal employees who have been brought into the District from the various States of the Union to serve their Country in the National Capital, provided such employees have not of their own volition surrendered their domiciles in the States and have voluntarily acquired domiciles within the District of Columbia.*" (Cong. Record, July 11, 1939, Vol. 84, Part 8, 76th Cong., 1st Session, p. 8824.)

The same view as to the meaning to be given to the word "domicile" prevailed among the managers on the part of the House, except Representative Dirksen.

On July 12, 1939, the day after Senator Overton's explanatory statement, Mr. Bates of Massachusetts, one of the conferees on the part of the House, replied to a statement by Mr. McCormack that if Federal employees were to be subjected to Federal, State and District of Columbia income taxes, the Congress would be compelling them involuntarily to give up the exercise of their suffrage.

Mr. Bates stated:

> "That particular point that my colleague from Massachusetts raises was made in the committee of conference by both the gentleman from Illinois and myself. We raised that particular point because we are much concerned about how those who come from our States would be affected by the income tax provisions of the new law, and it is distinctly understood that in this bill there should be no triple taxation, and I well recall Senator Tydings raising the point also." (Cong. Record, July 12, 1939, Vol. 84, Part 8, 76th Cong., 1st Session, p. 8973.)

A definition of the term "domicile" was announced on the floor of the House which was not challenged, and consequently should be given great weight in determining the interpretation to be given to that word.

Mr. Nichols of the Committee on the District of Columbia submitted the Conference Report which ultimately became the present law:

> "Mr. Nichols: Since the question of the effect of the word 'domicile' in this Act has been raised, I think the House would probably like the legal definition read:
>
> > "'Domicile is the place where one has his true, fixed, permanent home and principal establishment and to which, whenever he is absent, he has the intention of returning, and where he exercises his political rights—There must exist in combination the fact of residence and animus manendi—'
>
> which means residence and his intention to return (sic); so that under this definition he could certainly live in the District of Columbia and have his legal domicile in any other State in the United States." (Cong. Record, July 12, 1939, Vol. 84, Part 8, 76th Cong. 1st Session, p. 8974.)

To accept the contention of the petitioner as to the meaning of the term "domicile" is to disregard the plain intent of the Congress, and to substitute for the present statute the provisions of a bill which the Congress had rejected.

(b)

Respondent was not domiciled in the District of Columbia.

Respondent, Murphy, came to reside in the District of Columbia in 1935 for the purpose of rendering service to the Federal Government and has had the constant intent to return to Michigan upon termination of that employment.

The respondent has exercised his right of suffrage in Wayne County, Michigan, at all times since the establishment of his domicile in Michigan as his domicile of choice.

Of all the criteria as to domicile, the exercise of the right of voting is among the most important.

Shelton v. *Tiffin*, 6 How. 163 (1848).
Rollings v. *Rollings*, 53 F. (2d) 917, 60 App. D. C. 305 (1931).
Downs v. *Downs*, 23 App. D. C. 381 (1904).
Commonwealth v. *Emerson*, 1 Pear. (Pa.) 204 (1861).

It is true that the respondent in this case has paid no taxes to the State of Michigan. Michigan has no income tax and the respondent has no personal property or real property in Michigan. Thus, no taxes were owing to the State of Michigan.

The true test as to the retention of State domicile by a Federal employee residing in the District of Columbia has been announced in the case of *District of Columbia* v. *Sweeney*, — App. D. C. — 113 F. (2d) 25, 33; *cert. den.* 310 U. S. 631.

> "Except for the payment of taxes on his intangible personalty (the record does not show that Massachusetts taxes it at all except as to income) petitioner has done all that anyone could do, circumstanced as he has been, to maintain his state domiciliation. It follows that he was not domiciled in the District on the taxable dates and that the taxes assessed against him as a domiciliary were invalid."

In the instant case, the respondent has done all that anyone could do, circumstanced as he has been, to maintain his state domiciliation. It follows that he was not domiciled in the District of Columbia on December 31, 1939.

(c)

The decision of the Court below was founded upon correct principles of law.

In an exhaustive opinion which examined to its roots the question of the domicile of Federal employees in the District of Columbia, the United States Court of Appeals for the District of Columbia enunciated the correct principle of law as follows:

> "Accordingly we think that one who comes to the District and remains to render service to the Government which requires his presence here, may retain his domicile in the State from which he comes until the service terminates unless he gives clear evidence of his intent to forego his state allegiance. * * * The considerations which we have held controlling require that evidence of intention to change be clear and unequivocal. * * *"
>
> *Sweeney* v. *District of Columbia*, — App. D. C. —, 113 F. (2d) 25, 32; *cert. den.* 310 U. S. 631.
>
> *See also Lesh* v. *Lesh*, (1903) 13 Pa. Dist. Rep. 537, 540.
>
> *Atherton* v. *Thornton*, (1835) 8 N. H. 178 and authorities cited in Kennan on Residence and Domicile (1934), Sections 67 and 68, pp. 142-145.

It is pertinent to note that most States require domicile for voting and have constitutional provisions preventing loss of "residence" for voting purposes by absence in Government service. Such a provision appears in Article III of the Constitution of the State of Michigan. Section 2 of that Article reads:

> "No elector shall be deemed to have gained or lost a residence by reason of his being employed in the service of the United States or of this State, nor while

> engaged in the navigation. * * *" (The Compiled Laws of the State of Michigan, 1929, p. 203.)

The argument of petitioner that the domicile of an employee of the Federal Government should be determined by the same general rules applicable to persons in private employment is faulty for two reasons. First, the question before this Court is as to domicile of Federal employees in the District of Columbia and not elsewhere. Second, it leaves the inference that one may be domiciled for purposes of taxation in one jurisdiction and domiciled for other purposes in another jurisdiction.

One of the few propositions on the law of domicile upon which all authorities are agreed is that an individual may have one, and only one, domicile.

Mr. Justice Holmes in the case of *Williamson* v. *Osenton*, 232 U. S. 619, 625 (1914) stated:

> "The very meaning of domicile is the technically pre-eminent headquarters that every person is compelled to have in order that certain rights and duties that have been attached to it by the law may be determined. Bergner and Engel Brewing Co. v. Dreyfus, 172 Mass. 154, 157. In its nature it is one, and if in any case two are recognized for different purposes, it is a doubtful anomaly. Dicey, Conflict of Laws, 2d Ed. 98."

> See also Beale, Conflict of Laws (1935) Vol. I, p. 123, Kennan on Residence and Domicile (1934), Section 13, pages 34-35.

In its discussion of the proposition of domicile of Federal employes in the District of Columbia "for purposes of taxation" the petitioner advances the novel proposition that there is a distinction between civil and political domicile.

This proposition was condemned by the United States Court of Apeals for the District of Columbia in the case of *Sweeney* v. *District of Columbia*, — App. D. C. — 13 F. (2d) 25, 30; *cert. den.* 310 U. S. 631, in the following words:

"... the suggested distinction is more theoretical then practical, argumentatively specious than safely tenable..."

(d)

The decision of the Court below operates equitably. To reverse that decision would result, in the majority of cases, in subjecting the income of Federal employees in the District of Columbia to double taxation quite apart from the Federal income tax.

On March 27, 1939, in the case of *Graves* v. *New York ex rel. O'Keefe*, (306 U. S. 466) this Court held that there was no constitutional prohibition against the taxation of Federal salaries by the States. On April 12, 1939, sixteen days after the decision was handed down, the Public Salaries Act was approved (53 Stat. (Part 2) 574) making State salaries subject to Federal taxation and consenting to State taxation of Federal salaries. Shortly afterward most of the states subjected Federal salaries to taxation. (Michigan, which is the State of the respondent's domicile, is one of the very few States which has no income tax system.)

The practical question in the case of Graves v. O'Keefe was whether individuals deriving Federal salaries shall be placed in a preferred cateory by exempting such salaries from State taxation. The answer was in the negative. The practical question in this case was whether individuals deriving salaries from Federal employment in the District of Columbia should be placed in an especially onerous category by subjecting them to income taxation in the District of Columbia, as well as in the States of domicile. The answer by the Court below was in the negative. The decision is just and should not be disturbed.

CONCLUSION.

It is respectfully submitted that because the present case is not important and involves a statute limited in application to the District of Columbia, and because the decision of the Court below is correct on its merits, the petition for a writ of certiorari should not be granted.

HARRY RAYMOND TURKEL,
Attorney for Respondent.

FILE COPY

IN THE

Supreme Court of the United States

OCTOBER TERM, 1941.

No. 58.

DISTRICT OF COLUMBIA, *Petitioner*,

v.

HENRY C. MURPHY, *Respondent*.

BRIEF FOR RESPONDENT.

HARRY RAYMOND TURKEL,
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PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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BRIEF FOR RESPONDENT.

OPINIONS BELOW.

The opinion of the Board of Tax Appeals for the District of Columbia (R. 4-10) is not reported. The opinion of the United States Court of Appeals for the District of Columbia (R. 19-23) is reported at 119 F. (2d) 451.

JURISDICTION.

The judgment of the United States Court of Appeals for the District of Columbia was entered on March 24, 1941. The jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code, as amended by the Act of February 13, 1925.

STATEMENT OF THE CASE.

The statement of the case as given in petitioner's brief, pages 2 and 3, is substantially correct.

STATUTE INVOLVED.

Section 2(a) of the District of Columbia Income Tax Act, (53 Stat. 1087) Section 980a. Title 20, D. C. Code, 1929, Supplement V, provides as follows:

> "TAX ON INDIVIDUALS.—There is hereby levied for each taxable year upon the taxable income of every individual domiciled in the District of Columbia on the last day of the taxable year a tax at the following rates:"
>
> • • • • • • • •

SUMMARY OF ARGUMENT.

I.

Congress did not intend the Act to apply to Federal employees in the District of Columbia unless they had abandoned their domiciles in the states.

II.

The decision of the Court below was based upon correct principles of law and was equitable because it avoided double taxation.

III.

A reversal of the decision of the Court below would immediately deprive at least 24 states of the right to tax Federal employees in the District of Columbia domiciled in those states, and would subject Federal employees from two states to double taxation.

ARGUMENT.

I.

Congress did not intend the Act to apply to Federal employees in the District of Columbia unless they had abandoned their domiciles in the states.

Since the essence of the present case is the interpretation to be given to the word "domiciled", it seems necessary to trace the legislative history of the act imposing the tax liability. The act itself does not define the term.

Reference will be made to the first House bill because it shows the point of departure. According to the report of the House Conferees, the House bill originally provided:

> "(b) the tax to be imposed on all residents of the District of Columbia, regardless of source of income, and on nonresident individuals and corporations on income from sources within the District, with provisions for tax paid in other jurisdictions to avoid double taxation."[1]

The language of this report shows clearly that at the outset the House desired to avoid double taxation. It recognizes that there may be persons resident in the District of Columbia who are domiciled in the several states. Accordingly when it was planned to base tax liability upon residence, provision was made for a credit against taxes paid in other jurisdictions.

The bill was amended on the floor of the House so as to exempt from the income tax "Senators, Representatives, Delegates, Resident Commissioners, officers and employees of the Senate and House of Representatives of the United States."[2] This exemption provision was unacceptable to the Senate, and the bill was sent to conference where agreement was reached on the principle that the tax should be

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[1] 84 Cong. Record (Part 8) 8971; for digest of history of H. R. 6577, see 84 Cong. Record (Part 15), Index, p. 849.

[2] 84 Cong. Record (Part 7) 7036.

levied on "every individual domiciled in the District of Columbia on the last day of the taxable year."

There follows an explanation from the report of the managers on the part of the House which throws light upon the omission from the final Act of any provision for a tax credit.

> "(b) the tax is imposed on persons domiciled in the District on the last day of the taxable year, regardless of source of income, and upon corporations on sources from within the District, no tax is imposed on individuals domiciled without the District from sources within the District, and no provision is made for credit allowance to persons domiciled in the District for tax paid to other jurisdiction on income from sources therein."[1]

It seems clear that when the basis of tax liability was shifted from "residence" to "domicile", no provision was made for a tax credit, because the tax was not to be imposed on those persons domiciled outside the District. The omission of the tax credit provision ought not to be construed as sanctioning double taxation, but rather as an indication that the drafters of the bill thought it unnecessary to do so because they had segregated the classes of taxpayers in such a way as to avoid double taxation; that is, those persons domiciled in the states were to pay income taxes to the states, and those persons domiciled in the District were to pay income tax to the District.

It being clear that the Congress did not intend to subject Federal employees in the District of Columbia to double taxation, it is appropriate to inquire whether the Congress intended the Federal employees in the District of Columbia to be subjected to income taxation in the states *or* in the District of Columbia.

Senator Overton, chairman of the managers on the part of the Senate, in reporting the action of the conferees, stated

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[1] 84 Cong. Record (Part 8) 8971.

with reference to the imposition of tax liability on the basis of domicile:

> "Mr. President, I now call attention to the fact that the individual income tax is imposed only on those domiciled in the District of Columbia. It, therefore, necessarily excludes from its imposition all Senators and Members of the House of Representatives, the President of the United States, all Cabinet officers, and *Federal employees who have been brought into the District from the various States of the Union to serve their Country in the National Capital, provided such employees have not of their own volition surrendered their domiciles in the States and have voluntarily acquired domiciles within the District of Columbia.*"[1]

Counsel for the petitioner refer to this evidence as to the intent of Congress and attempt to dismiss it as being merely an expression of personal opinion (Petitioner's Brief, p. 28). This view is believed to be erroneous and based upon conjecture.

It is urged that the view as to the interpretation of the word "domicile" as given by Senator Overton, also prevailed among the managers on the part of the House, except Representative Dirksen.

On July 12, 1939, the day after Senator Overton's explanatory statement, Mr. Bates of Massachusetts, one of the conferees on the part of the House, replied to a statement by Mr. McCormack that if Federal employees were to be subjected to Federal, State, and District of Columbia income taxes, the Congress would be compelling them involuntarily to give up the exercise of their suffrage.

Mr. Bates stated:

> "That particular point that my colleague from Massachusetts raises was made in the committee of conference by both the gentleman from Illinois and myself. We raised that particular point because we are much concerned about how those who come from our States would be affected by the income tax provisions of the

[1] 84 Cong. Record (Part 8) 8825.

> new law, and it is distinctly understood that in this bill there should be no triple taxation, and I well recall Senator Tydings raising the point also."[1]

A definition of the term "domicile" was announced on the floor of the House which was not challenged, and consequently should be given great weight in determining the interpretation to be given to that word.

Mr. Nichols of the Committee on the District of Columbia submitted the Conference Report which ultimately became the present law:

> "Mr. Nichols: Since the question of the effect of the word 'domicile' in this Act has been raised, I think the House would probably like the legal definition read:
>
> " 'Domicile is the place where one has his true, fixed, permanent home and principal establishment and to which, whenever he is absent, he has the intention of returning, and where he exercises his political rights—There must exist in combination the fact of residence and animus manendi—'
>
> which means residence and his intention to return (sic); so that under this definition he could certainly live in the District of Columbia and have his legal domicile in any other State in the United States."[2]

Counsel for the petitioner in their brief at page 27 allege that the statement made by Mr. Bates does not bear upon the point and that the definition read by Mr. Nichols was not adopted by the House. All of the discussion in the Congress is printed in the petitioner's brief (pp. 21-26) and respondent is satisfied that a reading of this discussion leaves the conclusion that the prevailing opinion was that Federal employees in the District of Columbia were not to be subject to the tax unless they had surrendered their domiciles in the States from which they were appointed and acquired domiciles in the District of Columbia. It has been

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[1] 84 Cong. Record (Part 8) 8973.

[2] 84 Cong. Record (Part 8) 8974.

frankly stated by the respondent to the Court below, and in the brief in opposition to the granting of a writ of certiorari, that Mr. Dirksen did not share this view, but it has been maintained and is again maintained that the prevailing view among the conferees was that the interpretation to be accorded to the word "domiciled" would leave the Federal employee liable to income taxation in his home state and exempt in the District of Columbia.

II.

The decision of the Court below was based upon correct principles of law and was equitable because it avoided double taxation.

A.

The decision of the Court below was based upon correct principles of law. The domicile of a Federal employee in the District of Columbia is not to be determined under the same general rules applicable to persons in private employment.

The decision in the Court below was rested squarely upon the statement of law enunciated in the case of James J. Sweeney v. District of Columbia[1] which arose on essentially identical facts. The question for decision was stated by that Court as follows:

> "Boiled down to its essence, the question here is whether a citizen and resident of a state must surrender his state allegiance for all the purposes in which domicil may be controlling when he accepts Federal employment in the District of indefinite or relatively permanent duration."

The decision of that case is as follows:

> "Accordingly we think that one who comes to the District and remains to render service to the Govern-

[1] 72 App. D. C. 30 (1940), 113 F. (2d) 25 (1940), cert. den. 310 U. S. 631.

ment which requires his presence here, may retain his domicile in the State from which he comes until the service terminates unless he gives clear evidence of his intent to forego his state allegiance. * * * The considerations which we have held controlling require that evidence of intention to change be clear and unequivocal. * * *"

The Court reasoned that a contrary decision would create unjust and intolerable discriminations. It would permit military men, elected officials, and officials appointed for a definite term to retain their state domiciliation, and to deprive of state domiciliation and impose that of the District upon members of the Federal Courts, members of administrative tribunals enjoying long, but not unlimited tenure, and upon Civil Service employees.

The Court advanced additional reasons to support its view:

"Without regard to constitutional considerations, the system would be strange which would permit or require state domiciliation for elected legislative and executive officials and deny it automatically to co-ordinate judicial officers or compel them to maintain it by residing outside the District and in a state not otherwise of their choice. Equally, if not more, strange would be one so capable of discriminating, in practical consequences and legal effects, between the high and the low, the well-to-do and the poor in the Federal service. If such a price were placed so broadly upon the acceptance of Federal duty, the consequences would be entirely unpredictable, whether for the Government or for the individuals immediately concerned. Many would accept it of necessity. Others would not do so for any preferment. State attachment is not incompatible with Federal service. On the contrary, it remains a compelling allegiance, secondary only to national loyalty, not merely for a few, but for all Federal servants who do not prefer District domiciliation. Our dual system contemplates a harmony, not an antagonism, of state and national allegiances. Each is the complement, not the antithesis, of the other. A rule which would compel surrender of the one in order to

> exercise the other fully would be inconsistent with these principles. Creation of a vast army of Federal officials and employees detached from the states in all of the civil and political relations which domicil sustains is not a thing desired or desirable, whether regarded from the point of view of the Government, the states, or the individuals. That connection with the home community is a key pin in the structure of the dual system. It should not be weakened or destroyed, as it would be by acceptance of respondent's view." (Footnotes omitted)

Counsel for the petitioner attempt to avoid the rule of law enunciated in the Sweeney case by arguing that Federal employees may be domiciled in the District of Columbia for purposes of taxation, and domiciled in their home states for other purposes. While admitting that there is a difference between citizenship and domicile, it cannot be admitted that domicile is divisible.

One of the few propositions in the law of domicile upon which all authorities are agreed is that an individual may have one, and only one, domicile.

Mr. Justice Holmes in the case of *Williamson* v. *Osenton*[1] stated:

> "The very meaning of domicile is the technically pre-eminent headquarters that every person is compelled to have in order that certain rights and duties that have been attached to it by the law may be determined. Bergner and Engel Brewing Co. v. Dreyfus, 172 Mass. 154, 157. In its nature it is one, and if in any case two are recognized for different purposes, it is a doubtful anomaly. Dicey, Conflict of Laws, 2d Ed. 98."
>
> See also: Beale, Conflict of Laws, (1935) Vol. I, p. 123, Kennan on Residence and Domicile, (1934) Sec. 13, pp. 34-35.

The Court below considered the proposition that there is a distinction between civil and political domicile and the proposition was rejected by the Court as being "more theo-

[1] 232 U. S. 619, 625 (1914).

oretical than practical, argumentatively specious than safely tenable."[1]

The rule that the Federal employee is entitled to retain his domicile in the state from which he was appointed, which was confirmed in the *Sweeney* case, is supported by the clear weight of judicial authority, many instances of Congressional recognition in principle, and the long-established custom and practice of other officials and departments.[2]

Since domicile must be one, the question seems to be whether, after residence in the District of Columbia, coupled with the intent to stay here so long as his Federal employment continues, the Federal employee shall be conclusively deemed to be domiciled in the District of Columbia, or whether he shall be permitted to retain the domicile of the state from which he was appointed if he so desires.

In this connection it is pertinent to note that practically all states have provisions either in their Constitution or laws, requiring domicile as a condition for the exercise of the franchise and providing that absence in the Government service does not prevent loss of "residence."

In this case, for example, Section 2 of Article III of the Constitution of Michigan reads as follows:

> "No elector shall be deemed to have gained or lost a residence by reason of his being employed in the ser-

[1] 72 App. D. C. 30, 35 (1940); 113 F. (2d) 25, 30 (1940). The idea of "fiscal domicile" appearing in European tax treaties as applied to individuals means the same as "domicile" in this country, League of Nations C. 118 M. 57. 1936. II. A. pp. 9 and 23; it was adopted of necessity and was not intended to change concepts of domicile in other fields, L. of N., F. 212 of February 7, 1925, p. 20; "fiscal domicile" means one thing for income tax and something else for succession duties, F./Fiscal 111 of June 22, 1939, p. 17. Finally the idea of "fiscal domicile" has not been accepted by this country in dealing with continental countries. (U. S.-Swedish Tax Convention, signed March 23, 1939; U. S. Treaty Series No. 958, and U. S.-French Tax Convention, signed July 25, 1939, 76th Congress, 3d Session, Executive Report No. 7.)

[2] See citations and footnotes in Sweeney v. District of Columbia, 72 App. D. C. 30, 37 (1940); 113 F. (2d) 25, 32 (1940). The rule is of ancient origin. Bruce v. Bruce (1790), 2 Bosanquet & Puller 229, and Atherton v. Thornton (1835), 8 N. H. 178.

vice of the United States or of this state, nor while engaged in the navigation, etc. * * *"[1]

If this Court confirms the common law doctrine that domicile is indivisible and at the same time rules that Federal employees are domiciled in the District of Columbia, it will deprive Federal employees of their franchise in the several states.

B.

The decision of the Court below was equitable because it avoided double taxation.

The decision of this Court in the case of *Graves* v. *O'Keefe*, 306 U. S. 466, was handed down on March 27, 1939. That decision stated that there was no principle of constitutional law exempting Federal salaries from state taxation or exempting state salaries from Federal taxation. Within sixteen days, on April 12, 1939, the Public Salary Tax Act was approved.[2] That Act extended the Federal income tax to state compensation and provided that state income tax laws may apply to Federal compensation.

A large number of state legislatures immediately amended their income tax laws to eliminate Federal salaries from the list of items of income to be excluded from gross income. In 1939, seventeen states removed the exemption heretofore accorded. The laws of nine others automatically provided for taxation of Federal salaries whenever the Federal law permitted, or whenever state salaries became subject to Federal taxation. Six additional states removed the exemptions in 1940 and 1941.

It is abundantly clear that Federal salaries are, in fact, taxable under the laws of all states having personal income tax laws. Whether salaries derived by Federal employees in the District of Columbia are subject to these state laws is a matter of interpretation.

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[1] Compiled Laws of the State of Michigan, 1929, p. 203.

[2] 53 Stat. (Part 2) 574. See Title I, Sections 1 and 4.

Counsel for the petitioner in their brief at pages 16 and 17 allege:

> "Examination of the laws and regulations of the remaining twenty-three states disclose that in only one instance do such laws and regulations indicate an intention to extend the tax to individuals (either Government employees or others) having their homes and actually residing and earning their income without the state."

Counsel for the respondent has likewise examined carefully all of the income tax laws and some of the regulations of the various states and comes to contrary conclusion. Not being content to rest his case upon such an examination alone, on September 3, 1941, he addressed the State Income Tax Departments of 32 states which were believed to subject the salaries in question to state taxation, and inquired whether "You would consider a person who claims to be domiciled in your State, but who works for the Federal Government in the District of Columbia and maintains a home here, as liable to your State Income Tax on his Federal salary."

Of the 31 replies received, 25 states unequivocally replied that Federal employees in the District of Columbia, claiming domicile in the states from which they were appointed, were subject to state taxation on their Federal salaries. Five state administrators replied in the negative, and one reply was doubtful.

There has been filed with the Clerk of this Court nine copies of a table entitled "Liability to State Income Taxation of Federal Employees in the District of Columbia Claiming Domicile in the States From Which They Were Appointed." The second column of this table has a carefully prepared list of citations to those provisions of the state income tax laws which define the term "residents" and make Federal salaries subject to state taxation. The third column indicates briefly the opinions of the state tax administrators. The originals of the letters containing these opinions have also been filed with the Clerk.

If the Court below had held Federal employees from the various states to be domiciled in the District of Columbia, they would have been subjected to income taxation on those salaries in the District of Columbia as well as in the majority of the states. The decision of the Court below was, therefore, entirely equitable.

III.

A reversal of the decision of the Court below would immediately deprive at least 24 states of the right to tax Federal employees in the District of Columbia domiciled in those states, and would subject Federal employees from two states to double taxation.

While it is believed that the Court below was correct in permitting Federal employees in the District of Columbia to retain their domiciles in the states from which they were appointed, it is recognized that it is possible for this Court to assign Federal employees a domicile in the District of Columbia. Since no individual may be domiciled in more than one place, to hold that a Federal employee is domiciled in the District of Columbia is to relieve him of domicile in the state from which he was appointed. To relieve a Federal employee in the District of Columbia of domicile in the state from which he was appointed is to relieve him of taxation in that state, since nearly all states which tax Federal employees in the District of Columbia do so on the ground that they are domiciled in those states.

It is argued to this Court that the Public Salary Tax Act was intended to permit the several states to tax all Federal salaries. There is no express condition forbidding them to tax Federal salaries of their citizens derived in the District of Columbia. Nevertheless, a reversal of the decision of the Court below will bar them from continuing in this field of taxation.

A reversal of the decision of the Court below by this Court would immediately subject Federal employees from

Delaware and Missouri to double taxation, whereas at the present time they are subject to income taxation only in those states. These states impose liability on the basis of *citizenship* as well as residence.[1] To hold that Federal employees from the states are domiciled in the District of Columbia would be to subject them to income taxation in the District of Columbia while leaving them liable to taxation in those states. The affirmation of the decision of the Court below would leave them liable to taxation in those states alone.

Essentially, the question in the case *Graves* v. *O'Keefe* was one of taxation, as opposed to escape from taxation. In the present case, the essential question has been taxation, as against double taxation; but in its final stage the question is: where shall the Federal employee in the District of Columbia be subjected to income taxation? It is submitted that the legislative history of the act, the law, and the equities require that the Federal employee in the District of Columbia who intends to return to his home state be subjected to but one income tax, and that in the state from which he comes.

CONCLUSION.

For the reasons stated above, it is respectfully submitted that respondent was not domiciled in the District of Columbia on December 31, 1939, and that the decision of the Court of Appeals should be affirmed.

HARRY RAYMOND TURKEL,
Attorney for Respondent.

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[1] Revised Code of Delaware, 1935, Sec. 144 (b) (1), and Revised Stat. of Missouri, 1939, Vol. II, Sec. 11343 (p. 2972).